

From: [Sullivan, Joan A.](#)
To: [Morgan, Terry A.](#); [Ohr, Peter S.](#); [Cowen, William B.](#); [Watson, Timothy](#); [Hadsall, Jennifer A.](#); [Nachand, Patricia](#); [Wagner, Loral S.](#)
Subject: Fwd: Breaking: Biden Moves to Oust Top Labor Board Attorney Robb
Date: Wednesday, January 20, 2021 4:55:14 PM

All,

As you know this was not expected. Stay tuned.

Joan

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From: Martin, Andrew <Andrew.Martin@nlrb.gov>
Sent: Wednesday, January 20, 2021 3:35 PM
To: DG-Legal News FYI
Subject: Breaking: Biden Moves to Oust Top Labor Board Attorney Robb

Biden Moves to Oust Top Labor Board Attorney Robb

BY [IAN KULLGREN](#)

Jan. 20, 2021, 3:12 PM

Listen

The new Biden administration has asked for the resignation of the National Labor Relations Board's general counsel, Trump-appointee according to four people familiar with the decision.

Robb is the first general counsel to be forced out in more than half a century, a move that suggests the partisan rancor that befell the normally staid agency during the Trump era could become the new normal. Robb's Democratic replacement, who needs Senate confirmation, would be able to begin reversing the prior administration's changes to agency procedure, though Democrats on the NLRB will still face gridlock until Republicans lose the board majority in August.

An NLRB spokesman didn't immediately respond Wednesday when asked for comment. White House spokespeople didn't immediately respond when asked for comment.

Robb clashed with Democrats on Capitol Hill during his tenure, especially over the agency's [failure](#) to spend the entire allocation of its annual budget and a [short-lived plan](#) to centralize control over field operations and shorten investigations.

Only one other general counsel, Robert Denham, was asked to leave in 1950 at the request of then-President Harry Truman over the execution of the anti-union Taft-Hartley Act. Denham voluntarily resigned.

To contact the reporter on this story: in Washington
at ikullgren@bloombergindustry.com

To contact the editor responsible for this story: at mmuellerneff@bloomberglaw.com

Bloomberg Law

Daily Labor Report[®]

Wednesday, January 20, 2021

Biden Moves to Oust Top Labor Board Attorney Robb

The new Biden administration has asked for the resignation of the National Labor Relations Board's general counsel, Trump-appointed Peter Robb, according to four people familiar with the decision.

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From: [Sullivan, Joan A.](#)
To: [Morgan, Terry A.](#); [Ohr, Peter S.](#); [Cowen, William B.](#); [Watson, Timothy](#); [Hadsall, Jennifer A.](#); [Nachand, Patricia](#)
Cc: [Wagner, Laura S.](#)
Subject: Fwd: Law360:BREAKING: NLRB GC Robb Tells Biden He Won't Leave Office
Date: Wednesday, January 20, 2021 8:36:36 PM

Do you wish to meet this week given the news below?

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From: Martin, Andrew <Andrew.Martin@nlrb.gov>
Sent: Wednesday, January 20, 2021 8:08 PM
To: DG-Legal News FYI
Subject: Law360:BREAKING: NLRB GC Robb Tells Biden He Won't Leave Office

BREAKING: NLRB GC Robb Tells Biden He Won't Leave Office

By [Braden Campbell](#)

Law360 (January 20, 2021, 6 30 PM EST) -- [National Labor Relations Board](#) general counsel Peter Robb declined Wednesday to step down as the board's top prosecutor shortly after President Joe Biden requested his resignation in a fast-developing power struggle.

Robb called the president's afternoon request "unprecedented since the nascence of the National Labor Relations Act" and said his removal "would set an unfortunate precedent" for U.S. labor relations by undermining the independence of the GC's office, according to a copy of the letter obtained by Law360. The president gave Robb a 5 p.m. deadline to step down or be fired, according to the letter.

"I respectfully decline to resign from my Senate-confirmed four-year term appointment as general counsel of the NLRB less than 10 months before the expiration of my term," Robb wrote in a letter to the White House.

It was not immediately clear whether Robb remained in his role as general counsel as of Wednesday night.

NLRB spokesman Kevin Petroccione declined to comment. Representatives for the White House did not immediately respond to requests for comment.

The general counsel decides which labor disputes to prosecute and crafts the legal theories staff attorneys present to the five-member board, giving the office significant power to shape federal labor policy. Following the election, labor leaders had cited this authority as detrimental to unions in [pleas for Biden to relieve Robb](#) of his duties.

Robb advanced numerous business-friendly interpretations of the National Labor Relations Act since taking office in November 2017, securing board decisions expanding employers' powers to make changes to job terms without the OK from their workers' unions and narrowing workers' access to employers' property and equipment, among others.

--Editing by Haylee Pearl.

For a reprint of this article, please contact reprints@law360.com.

From: [Coleman, Jocelyn](#)
To: [DG-Everyone \(R\)](#)
Subject: FW: Message from Peter Robb to the Agency
Date: Thursday, January 21, 2021 2:25:47 PM
Attachments: [Robb to Russell re resignation - pdf.pdf](#)
[FW Resignation request.msg](#)

From: Stock, Alice B. <Alice.Stock@nlrb.gov>
Sent: Thursday, January 21, 2021 2:03 PM
To: Coleman, Jocelyn <Jocelyn.Coleman@nlrb.gov>
Subject: Message from Peter Robb to the Agency

Please send the following message with attachments to everyone at the Agency.

The following is a message from Peter Robb to the Agency:

I apologize for the delay in sending this message but unexpected events have been moving quickly and my priority was to make sure operations would continue as best as possible under the circumstances. As you know, I was asked to resign minutes after the President was sworn in. I declined as a matter of principle to avoid improper politicization of the Office of the General Counsel. I have attached copies of the emails.

I cannot express my sincere appreciation to all NLRB employees for the hard work and support over the last three years. At the risk of forgetting valuable contributions, I want to thank John Kyle, Alice, Dolores, Beth, John Doyle, Lasharn, Prem, Isabel, Richard, Mark, Nancy, Brenda, Christine, the Board Members, and every Regional Director. I have benefitted from the best Senior Leadership team in the federal government. But most of all, I am grateful for the hard work performed day-in and day-out by the managers, supervisors and rank and file employees who remain the backbone of the Agency and without whom our mission could not be fulfilled. I am so proud to have served with such fine, caring people. I am proud of what has been accomplished in the face of unprecedented challenges. I will always cherish this time at the Board. In leaving, I ask that you provide the same dedication, effort and excellence to my successors. In that way, the Board will continue to thrive. Thanks to all. I will carry you in my heart.

Alice B. Stock
Deputy General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570
Tel. (202) 273-3819
Fax (202) 273-4483
Alice.stock@nlrb.gov



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the General Counsel

1015 Half Street, SE

Washington, DC 20570

January 20, 2021

Amb. Cathy Russell
Assistant to the President & Director
Office of Presidential Personnel
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear Ms. Russell:

I write in response to your email sent at 12:23 pm today requesting my resignation as General Counsel of the National Labor Relations Board (NLRB) by 5 p.m. today and threatening my removal from that office if I do not resign by that time. Needless to say, I was surprised by the email as no one has previously discussed this issue with me. For the reasons discussed below, I respectfully decline to resign from my Senate-confirmed four-year term appointment as General Counsel of the NLRB less than 10 months before the expiration of my term.

First, the removal of an incumbent General Counsel of the NLRB prior to the expiration of the term by a President of the United States is unprecedented since the nascence of the National Labor Relation Act (NLRA) and the NLRB. One of the key amendments to the NLRA that occurred in 1947 was to create an independent General Counsel.

Most important, however, the removal of a General Counsel would set an unfortunate precedent for the labor relations of this country that will permanently undermine the structure and thus the proper functioning of the NLRB and the NLRA. In particular, such action undermines Congress's intent that the Office of the General Counsel be independent of the Board and the Executive Branch so that the General Counsel, as chief prosecutor of the NLRA, can prosecute potential violations of the NLRA free from political influence and pressure. Indeed, my own experience, as well as my conversations with those who held this position before me, have confirmed the need for the NLRB General Counsel to act independently without constant fear of removal.

It was my understanding that the incoming administration intended to foster civility and unity in this country and in the governing of this country, promising to adhere to the rule of law and enabling its chief law enforcement officers the independence, free from White House interference, to enforce the laws of the United States. A presidential removal of the NLRB's General Counsel prior to the expiration of his or her term violates these promises and principles. The prosecution of violations of the NLRA will now be subject to the political influence of the

White House, in violation of Congressional action to improve the function of the NLRB to achieve the NLRA's mission to fairly resolve labor disputes in the United States.

Finally, I am concerned that the abrupt manner in which this is being done will cause unnecessary interference with immediate Agency operations.

I would be happy to discuss any aspect of this with you.

Sincerely,

Peter B. Robb
General Counsel

Subject: FW: Resignation request

From: Russell, Catherine M. EOP/WHO <Catherine.M.Russell@(b) (6)>

Sent: Wednesday, January 20, 2021 12:23 PM

To: Robb, Peter <Peter.Robb@nrlb.gov>

Cc: Raghavan, Gautam EOP/WHO <Gautam.Raghavan@(b) (6)>

Subject: Resignation request

Dear Mr. Robb,

On behalf of President Biden, I am writing to request your resignation as General Counsel of the National Labor Relations Board. If you do not resign by 5:00 p.m. ET today, President Biden will remove you from that office.

Sincerely,

Amb. Cathy Russell
Assistant to the President & Director
Office of Presidential Personnel, The White House

From: [Sullivan, Joan A.](#)
To: [Cowen, William B.](#); [Hadsall, Jennifer A.](#); [Morgan, Terry A.](#); [Nachand, Patricia](#); [Ohr, Peter S.](#); [Watson, Timothy](#)
Cc: [Wagner, Loral S.](#)
Subject: RE: Bloomberg: NLRB Names Acting General Counsel to Replace Robb
Date: Thursday, January 21, 2021 5:12:29 PM

All,

This comes from Bloomberg news, and it is an FYI given the acrimony that is building over the departure of Peter Robb:

NLRB General Counsel's Firing Muddies Future Labor Enforcement

Jan. 21, 2021, 4:09 PM

Listen

- Legal authority to fire general counsel not totally clear
- Employers can challenge new GC's authority in cases

The unprecedented ouster of the National Labor Relations Board's top lawyer will spark litigation over the Biden administration's authority to remove him that has the potential to undermine his successor's work, former agency attorneys and officials said.

Regardless of whether Peter Robb fights his [termination](#) in court, individual employers that get hit with unfair labor practice complaints will challenge their validity, board watchers said. Companies can argue that [acting General Counsel Alice Stock](#)—or whoever follows Stock—lacks the power to authorize complaints because Robb's removal was illegal.

"Any management lawyer worth their salt should raise as an affirmative defense that the complaint was unlawfully issued and has no legal viability," said Jerry Hunter, a former Republican NLRB general counsel who represents employers for Bryan Cave Leighton Paisner.

Those expected legal challenges will put the NLRB on a path to the U.S. Supreme Court for the fourth time in recent years to defend appointments to the agency. It lost its three previous contests at the high court, which taken together invalidated years' worth of board decisions—estimated at more than a thousand rulings.

Robb, a veteran management attorney tapped by the Trump administration, earned the ire of organized labor with his [hard-charging](#), norm-bending [stewardship](#) of the NLRB general counsel's office. Union leaders [wanted him gone](#) before his four-year term expires in November. Robb received a quit-or-be-fired ultimatum less than an hour after President Joe Biden was sworn into office.

But Biden's power to remove Robb isn't totally certain due to ambiguities in the National Labor Relations Act, a federal law that created the NLRB in 1935 and, following amendments in 1947, the general counsel position.

"The firing was probably appropriate, but it does put a question mark over future unfair labor practice proceedings," said Jeffrey Hirsch, a former NLRB attorney who teaches workplace law at the University of North Carolina. "The only thing that's clear is that it's not clear."

Statutory Silence

The NLRA set forth very clear conditions for firing board members. The president can remove members “for neglect of duty or malfeasance in office, but for no other cause,” according to the law.

In contrast, the section describing the general counsel says nothing about removal.

To decide whether Biden could legally terminate Robb, courts will have to weigh whether that statutory silence means Congress didn’t want restrictions on removal, intended the conditions for removing board members to apply to the general counsel, or wanted to prevent the GC from being removed, said Anne Lofaso, a labor law professor at West Virginia University.

Making the general counsel totally invulnerable to being fired seems unreasonable, so that leaves courts to consider who has removal power and what are the conditions for invoking it, said Lofaso, a former NLRB attorney.

“It’s a hard call,” she said.

Prior Opinions on Removal Power

The federal government has weighed in on the issue three previous times, each time saying that a president could sack an NLRB general counsel.

The Justice Department’s Office of Legal Counsel said in 1954 and again in 1959 that the rule from the Supreme Court’s 1926 ruling in [Myers v. United States](#)—which backed the president’s power to fire executive branch officials—allows for the removal of the NLRB’s top lawyer.

The issue arose again in 1983, when a Republican NLRB chairman wanted to strip authority from a Democratic general counsel. Reagan administration lawyer John Roberts—nearly two decades before becoming the Supreme Court’s chief justice—opined in a memo that the president can fire GCs.

Those opinions, though not binding, “very much supports President Biden’s authority to fire Robb,” said William Gould, who served as NLRB chairman during the Clinton administration.

And while NLRB members serve five-year terms, thus overlapping presidential administrations, the four-year terms for general counsels indicate that Congress intended them to change with different presidents, said Gould, a professor at Stanford University.

Moreover, the Supreme Court’s June ruling in [Seila Law v. Consumer Financial Protection Bureau](#) signals the justices’ deference to presidential power, he said. That ruling affirmed that the president could fire the head of the CFPB, which is an independent agency with similarities to the NLRB.

Prior NLRB Losses

Despite some non-binding authority backing Biden’s power to fire Robb, serious questions remain about whether a court will decide he could, said Hunter, the former NLRB general counsel appointed by President George H.W. Bush.

“This could be another *Noel Canning* situation,” Hunter said, referring to one of the Supreme Court’s decisions that went against NLRB appointees.

In its 2014 ruling in [NLRB v. Noel Canning](#), the high court unanimously found that the

Obama administration's 2012 appointments of three NLRB members violated the Constitution's rules for installing officials when the Senate isn't in session. The decision invalidated more than 700 reported and unreported decisions issued by the board.

The Supreme Court similarly voided hundreds of board rulings in its 2010 ruling in [New Process Steel v. NLRB](#). On a 5-4 vote, the court held that the NLRB couldn't decide cases with a two-member board.

More recently, the high court said the Federal Vacancies Reform Act didn't allow an acting NLRB general counsel to continue serving once the president formally nominated him for the GC position.

But that 2017 decision in [NLRB v. SW General](#) wreaked much less havoc on the agency than *Noel Canning* or *New Process Steel*, since it only applied to unfair labor practice cases in which parties previously raised an objection to the acting general counsel's authority to authorize complaints.

To contact the reporter on this story: Robert Iafolla in Washington at riafolla@bloomberglaw.com

To contact the editor responsible for this story: Jay-Anne B. Casuga at jcasuga@bloomberglaw.com; Jo-el J. Meyer at jmeyer@bloombergindustry.com

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From: Sullivan, Joan A.

Sent: Thursday, January 21, 2021 1:37 PM

To: Cowen, William B. <William.Cowen@nlrb.gov>; Hadsall, Jennifer A. <Jennifer.Hadsall@nlrb.gov>; Morgan, Terry A. <Terry.Morgan@nlrb.gov>; Nachand, Patricia <Patricia.Nachand@nlrb.gov>; Ohr, Peter S. <Peter.Ohr@nlrb.gov>; Watson, Timothy <Timothy.Watson@nlrb.gov>

Cc: Wagner, Laural S. <Laural.Wagner@nlrb.gov>

Subject: FW: Bloomberg: NLRB Names Acting General Counsel to Replace Robb

All,

I am sure that you have seen this news, but there remains ambiguity. I will set a meeting if there is information or guidance to share. (b) (5)

Joan

From: Tursell, Beth <Beth.Tursell@nlrb.gov>

Sent: Thursday, January 21, 2021 1:17 PM

To: Baniszewski, Joseph <Joseph.Baniszewski@nlrb.gov>; Doyle, John D. <John.Doyle@nlrb.gov>; Hatfield, Yvette <Yvette.Hatfield@nlrb.gov>; Karsh, Aaron <Aaron.Karsh@nlrb.gov>; Kelly, David A. <David.Kelly@nlrb.gov>; Kilpatrick, Elizabeth <Elizabeth.Kilpatrick@nlrb.gov>; Mori, David H. <David.Mori@nlrb.gov>; Rodriguez, Miguel <Miguel.Rodriguez@nlrb.gov>; Sullivan, Joan A. <Joan.Sullivan@nlrb.gov>; Wagner, Laural S. <Laural.Wagner@nlrb.gov>

Subject: FW: Bloomberg: NLRB Names Acting General Counsel to Replace Robb

In case you haven't heard . . .

Beth Tursell

Associate to the General Counsel

1015 Half Street, SE

Washington, DC 20570

(202)273-2888

Beth.tursell@nlrb.gov

From: Martin, Andrew <Andrew.Martin@nlrb.gov>

Sent: Thursday, January 21, 2021 1:08 PM

Subject: Bloomberg: NLRB Names Acting General Counsel to Replace Robb

Bloomberg GOVERNMENT

[NLRB Names Acting General Counsel to Replace Robb](#)

By Ian Kullgren | January 21, 2021 12:16PM ET | Bloomberg Law

The National Labor Relations Board has named Alice Stock acting general counsel to replace Peter Robb, the Trump appointee who was [forced out](#) minutes after President [Joe Biden](#) took office Wednesday.

Stock was named deputy general counsel by Robb in 2019, and previously was a management-side attorney. She was a partner at Pryor Cashman in New York for eight years, helping employers defend against unfair labor practice charges and advising businesses in collective bargaining disputes and strikes, according to the agency's website.

It wasn't immediately clear whether the White House intended to keep Stock as acting general counsel until a permanent appointee is confirmed by the Senate, or whether the administration intends to select a more union-friendly attorney. An NLRB spokesman declined to comment further on Thursday.

To contact the reporter on this story: Ian Kullgren in Washington at ikullgren@bloombergindustry.com

To contact the editor responsible for this story: Martha Mueller Neff at mmuellerneff@bloomberglaw.com

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From: (b) (6)
To: [Ohr, Peter S.](#)
Subject: Fwd: Alice Stock, NLRB General Counsel (Jan. 21, 2021 – Jan. 21, 2021)
Date: Saturday, January 23, 2021 4:45:19 PM

Hope this comes true!

(b) (6), (b) (6)

Begin forwarded message:

From: (b) (6) (b) (6)
Subject: Re: Alice Stock, NLRB General Counsel (Jan. 21, 2021 – Jan. 21, 2021)
Date: January 23, 2021 at 11:43:19 AM HST
To: Mori Rubin <(b) (6)>
Cc: (b) (6) (b) (6) >, (b) (6) (b) (6) (b) (6) "Yashiki, Dale K" <Dale.Yashiki@nlrb.gov>, "Takaesu, Katie" <katie.takaesu@nlrb.gov>, "Burns, Meredith" <Meredith.Burns@nlrb.gov>, "Hovey Jr., Scott E." <Scott.HoveyJr@nlrb.gov>

That would be terrific! Peter is a first class person and dedicated to the mission of the NLRB

(b) (6)

On Jan 23, 2021, at 10:18 AM, Mori Rubin (b) (6) wrote:

I agree Peter would be fabulous. And....it would be especially wonderful since he was treated quite poorly by the former GC.

Our RD committee is quite excited about the prospect. He is our chairperson. Change is in the air!!!

PS Hi (b) (6)! I forgot to include you in this email and am glad (b) (6) added you. If Peter is appointed Monday, I will be sure to let you know.

On Sat, Jan 23, 2021 at 11:55 AM (b) (6) <(b) (6)> wrote:

Go Biden!! That is fabulous. I've had some dealings with Peter and he is terrific. Too bad Lafe retired!! Mori are you interested? I'd be happy to come out of retirement to be acting RD as long as I can work from home in my shorts!!!! Thanks for this good news! Even though I retired (b) (6) ago, I still feel a really deep emotional connection to the NLRB. I had a fabulous career with no downsides (Other than being annoyed by (b) (6) now and then!!)

From: Mori Rubin [mailto:(b) (6)]
Sent: Saturday, January 23, 2021 8:30 AM
To: (b) (6); (b) (6); (b) (6)
(b) (6) > (b) (6) (b) (6) >
Subject: Fwd: FW: Alice Stock, NLRB General Counsel (Jan. 21, 2021 – Jan. 21, 2021)

Dear all,

I hope you are all well. I am forwarding an article (b) (6), (b) (7)(C) sent me about the NLRB. Lots of drama this week. Biden became president at noon on Wednesday. At 12:20 GC Robb received an email from the office of the president saying he should resign by 5:00 pm or would be fired. He refused to resign and by the end of inauguration day, he was fired. That left his deputy (clone) who automatically became acting GC the next day. Repeat. She got an email from the office of president that she must resign by 5:00 or would be fired, she refused to resign, she was fired. That left us with no acting GC yesterday and an inability to issue anything. As you can see from the below article, there is talk that Peter Ohr may be appointed Acting GC, which would be wonderful!

----- Forwarded message -----

From: (b) (6) (b) (6)
Date: Fri, Jan 22, 2021 at 8:04 PM
Subject: FW: Alice Stock, NLRB General Counsel (Jan. 21, 2021 – Jan. 21, 2021)
To: Mori Rubin (b) (6) >

From: Labor Law Lite by Brandon Magner <brandonmagner@substack.com>
Sent: Friday, January 22, 2021 6:20 AM
To: (b) (6)
Subject: Alice Stock, NLRB General Counsel (Jan. 21, 2021 – Jan. 21, 2021)

.....

[Alice Stock, NLRB General Counsel \(Jan. 21, 2021 – Jan. 21, 2021\)](#)

The Robb firing showed Biden was serious about helping the NLRB.
The Stock firing shows Biden is committed.



[Brandon Magner](#)

Jan 22 ❤ 💬 📎



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January 20, 2021 was one of the best days for NLRB watchers and the labor movement in many years. It was inconceivable that January 21 could have matched it, but it came surprisingly close.

Less than 24 hours after newly inaugurated President Joe Biden fired Trump's holdover General Counsel, Peter Robb, following the latter's refusal to resign as requested, Biden fired NLRB lawyer Alice Stock almost immediately after her internal elevation to the Acting GC role.

Stock was previously the agency's Deputy General Counsel, the second-most powerful role in the GC's office. Not coincidentally, she was a career management lawyer who was personally plucked out of private practice by Robb to serve as an Associate GC in 2018 and was promoted to the right-hand job within a year. So while Robb absorbed all of the media flack for his role in yanking the agency off its statutory axel, the top-two positions in the agency were essentially one and the same.

This became important yesterday when Stock was automatically elevated to the top job following Robb's firing. The pessimist in me assumed that the big guns had been unholstered for Robb but would now be silent with him gone. I'm very happy to be wrong. Biden's labor advisers clearly understand the gravity of the situation and how deep the hole the NLRB is in. Any stewardship of the Board by a lawyer who is against the core principles of the National Labor Relations Act—even on a temporary basis—works to dig that hole deeper.

General Counsels Since 1935

| Name | Period of Service | |
|------------------------------|-------------------|----------|
| | From ¹ | To |
| Alice B. Stock ¹⁴ | 01/21/21 | Present |
| Peter B. Robb (R) | 11/17/17 | 01/20/21 |

Time to update this list, NLRB.

Combine this slate of news with the pick of career Steelworker official Jim Frederick to a top OSHA role and the selection of former NLRB Member and progressive labor lawyer Sharon Block to a major regulatory post at the OIRA, and I think even the

biggest skeptics among us can admit that Biden is exceeding expectations so far in the labor realm. We can thank the visionary people who have the President's ear and the unions that have been agitating for bold, Day One action since the election for these quick results.

So what can we expect next at the NLRB? An Acting GC—*Biden's* Acting GC—should be forthcoming any minute. It can't be just anyone off the street; it has to be a top official in the General Counsel's office or a Regional Director to avoid potential Vacancy Act issues. HuffPost's Dave Jamieson floated Region 13 (Chicago) Director Peter Ohr as a potential candidate. I think that would be a stupendous pick, if nothing else for Ohr's application of the NLRA in the Northwestern football union case. (He issued a Decision and Direction of Election which held the players were employees under the Act and thus possessed Section 7 rights to organize; the full Board in Washington punted on the case for jurisdictional reactions without reaching the substantive issue.)

A temporary elevation of Ohr or another Regional Director to the Acting GC role has precedent. In the 1990s, Bill Clinton selected Region 2 (New York) RD Daniel Silverman to run the GC's office while nominee Frederick Feinstein awaited confirmation. Silverman served in the role for a little over three months.

Whoever it ultimately is, this person would assume the General Counsel's duties for the weeks or months necessary until Biden's nominee achieves Senate confirmation. Importantly, the Acting GC cannot serve in the role while awaiting confirmation for the full-time job because of the Supreme Court's NLRB v. SW General decision, which rendered poor Lafe Solomon's time as Acting GC a political nullity. Biden's team won't make the same mistake.

Whatever the outcome of these personnel maneuvers, I think most of us can agree that it's refreshing to see the NLRB be treated like the key administrative agency that it. Labor law matters, and it's high time that politicians acted like it does.



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(b) (6)



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From: [Hamilton, Lasharn](#)
To: [Ohr, Peter S.](#)
Subject: FW: Resignation request
Date: Tuesday, January 26, 2021 9:34:33 AM
Attachments: [Stock to Raghavan re resignation.pdf](#)

Good morning Peter,

Per your request ...

Thanks,
Lasharn Hamilton
Director of Administration
National Labor Relations Board
(202) 273-3936

From: Stock, Alice B. <Alice.Stock@nlrb.gov>
Sent: Thursday, January 21, 2021 4:20 PM
To: Raghavan, Gautam EOP/WHO <Gautam.Raghavan@nlrb.gov> (b) (6)
Cc: Hamilton, Lasharn <Lasharn.Hamilton@nlrb.gov>
Subject: RE: Resignation request

Please find my response attached.

Alice B. Stock
Acting General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570
Tel. (202) 273-3819
Fax (202) 273-4483
Alice.stock@nlrb.gov

From: Raghavan, Gautam EOP/WHO <Gautam.Raghavan@nlrb.gov> (b) (6)
Sent: Thursday, January 21, 2021 4:13 PM
To: Stock, Alice B. <Alice.Stock@nlrb.gov>
Cc: Hamilton, Lasharn <Lasharn.Hamilton@nlrb.gov>
Subject: RE: Resignation request

Ms. Stock,

I am reaching out again in advance of 5:00 p.m. ET to again request your resignation. If I do not hear from you by that time, I will follow up with notification that your employment has been terminated.

Sincerely,
Gautam

From: Raghavan, Gautam EOP/WHO
Sent: Wednesday, January 20, 2021 4:32 PM
To: 'alice.stock@nlrb.gov' <alice.stock@nlrb.gov>
Subject: Resignation request

Dear Ms. Stock,

On behalf of President Biden, I am writing to request your resignation as Deputy General Counsel of the National Labor Relations Board by 5:00 p.m. ET tomorrow, Thursday, January 21, 2021.

Sincerely,

Gautam Raghavan
Deputy Assistant to the President & Deputy Director
Office of Presidential Personnel, The White House



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the General Counsel

1015 Half Street, SE

Washington, DC 20570

January 21, 2021

Mr. Gautam Raghavan
Deputy Assistant to the President & Director
Office of Presidential Personnel
The White House
1600 Pennsylvania Avenue
Washington, D.C.

Dear Mr. Raghavan:

I write in response to your email sent at 4.32 pm on January 20, 2021, requesting my resignation as Deputy General Counsel of the National Labor Relations Board (NLRB) by 5 p.m. today. For the reasons discussed below, I respectfully decline to resign from my position as Deputy General Counsel of the NLRB at this time.

As you know, I was appointed by General Counsel Peter B. Robb to serve as Deputy General Counsel of the NLRB and it was his and my intention for me to serve in that position through the end of his term on November 16, 2021. Thereafter, I intended to leave my employment with the NLRB if the next incoming General Counsel requested it. This would have been the normal, traditional and legal course – for the General Counsel of the NLRB to serve out his term and for the Deputy General Counsel to defer to the wishes of the incoming General Counsel. This is what happened at the change of the last administration in which Richard Griffin served out his term as General Counsel and Deputy General Counsel Jennifer Abruzzo was permitted by General Counsel Peter Robb to remain in her position until the end of the calendar year – approximately six weeks -- to ensure the orderly transition of the Agency.

However, given the dubious legality of the January 20, 2021 removal of Mr. Robb as General Counsel of the NLRB, the current vacancy of the General Counsel position at the NLRB, and the questionable legality and thus validity of any replacement of Mr. Robb with another General Counsel during the remainder of Mr. Robb's term, it would be detrimental to the operations of the NLRB for me to resign my position as Deputy General Counsel at this time.

The events of yesterday – the abrupt and unceremonious removal of General Counsel Robb – are unfortunate for our country and to those who believed that this administration intended to follow the traditions and rules of law in our democracy. These abrupt resignation requests do not serve the interests of the NLRB or the nation's stakeholders who rely on our continuing operations. Coupled with yesterday's events, my departure without notice and adequate time for transition would be damaging to the smooth operations of the NLRB and an orderly transition to a new

General Counsel. I would have expected a more civil and professional approach to the transition from this administration.

I would be happy to discuss this with you.

Sincerely,

Alice B. Stock
Deputy General Counsel

From: [Choe, Iva Y.](#)
To: [Bock, Richard](#); [Platt, Nancy](#)
Cc: [Ohr, Peter S.](#)
Subject: FW: RSP.19-CA-249264 and CB-250856.UNFI Opp to Teamsters Motion to Extend hrg date 02-01-2021.pdf
Date: Tuesday, February 2, 2021 4:57:18 PM
Attachments: [RSP.19-CA-249264 and CB-250856.UNFI Opp to Teamsters Motion to Extend hrg date 02-01-2021.pdf](#)

Richard and Nancy

Please see the attached motion. Miscamarra filed a motion for summary judgment with the Board and (b) (5).

Iva

From: Doyle, John D. <John.Doyle@nrlb.gov>
Sent: Tuesday, February 2, 2021 2:57 PM
To: Choe, Iva Y. <Iva.Choe@nrlb.gov>
Cc: Kilpatrick, Elizabeth <Elizabeth.Kilpatrick@nrlb.gov>
Subject: FW: RSP.19-CA-249264 and CB-250856.UNFI Opp to Teamsters Motion to Extend hrg date 02-01-2021.pdf

Good afternoon, Iva – Please see attached a recently-filed motion raising the propriety of prosecution by the Acting General Counsel. (b) (5)

(b) (5)

Many thanks, John

From: Kilpatrick, Elizabeth <Elizabeth.Kilpatrick@nrlb.gov>
Sent: Tuesday, February 2, 2021 2:48 PM
To: Doyle, John D. <John.Doyle@nrlb.gov>
Subject: FW: RSP.19-CA-249264 and CB-250856.UNFI Opp to Teamsters Motion to Extend hrg date 02-01-2021.pdf

Here it is

From: Pomerantz, Anne <Anne.Pomerantz@nrlb.gov>
Sent: Tuesday, February 2, 2021 1:41 PM
To: Kilpatrick, Elizabeth <Elizabeth.Kilpatrick@nrlb.gov>
Cc: Hooks, Ronald K. <Ronald.Hooks@nrlb.gov>
Subject: FW: RSP.19-CA-249264 and CB-250856.UNFI Opp to Teamsters Motion to Extend hrg date 02-01-2021.pdf

(b) (5)

Anne P. Pomerantz

Regional Attorney | National Labor Relations Board | Region 19

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✉ anne.pomerantz@nlrb.gov | ☎ (206) 220-6311 | Cell ☎ (206) 240-4194 | 📠 (206) 220-6305

- Please note the NLRB now requires electronic filing of documents. See [GC Memo 20-01](#) on the Agency's website.

From: Willmore, Winnie <Winnie.Willmore@nlrb.gov>

Sent: Tuesday, February 2, 2021 6:29 AM

To: Kennedy, Kristy <Kristy.Kennedy@nlrb.gov>; Pomerantz, Anne <Anne.Pomerantz@nlrb.gov>

Subject: RSP.19-CA-249264 and CB-250856.UNFI Opp to Teamsters Motion to Extend hrg date 02-01-2021.pdf

Received via NxGen.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

**UNITED NATURAL FOODS, INC., d/b/a
UNITED NATURAL FOODS, INC.
and SUPERVALU, INC.**

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 117 and
LOCAL 313**

Case Nos. 19-CA-249264 and
19-CB-250856

UNFI’S OPPOSITION TO UNIONS’ MOTION TO EXTEND HEARING DATE

United Natural Foods, Inc. (“UNFI” or “Company”) respectfully files this opposition to the Motion to Extend Hearing Date filed by Teamsters Local 117 (“Local 117”) and Teamsters Local 313 (“Local 313”) (collectively the “Unions”), which are the Respondents in Case 19-CB-250856. The Motion to Extend Hearing Date offers no valid reason for the requested extension except the desire of the Unions to prevent their alleged violations of Sections 8(b)(1)(A), 8(b)(2) and 8(b)(3) of the Act from being heard by the administrative law judge (“ALJ”) or the National Labor Relations Board (“NLRB” or “Board”). It usurps the NLRB’s role as an independent quasi-judicial agency to suggest that – merely because the Unions want to avoid prosecution – a Regional Director should postpone a hearing that has been noticed to redress, among other things, the restraint and coercion *of employees* regarding “rights guaranteed in section 7” (Section 8(b)(1)(A)). Granting this request would disregard the Supreme Court’s admonition that “the Act is *not* intended to serve either party’s individual interest, *but to foster in a neutral manner* a system in which the conflict between these interests may be resolved.” *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 680-681 (1981) (emphasis added). Accordingly, as explained more fully below, the Union’s Motion to Extend Hearing Date should be denied.

DISCUSSION

This consolidated case includes allegations in Case 19-CB-250856 that the Unions engaged in violations of the National Labor Relations Act (“NLRA” or “Act”). Specifically, the Unions are alleged to have violated Section 8(b)(1)(A) of the Act, among other things, which makes it unlawful for any union to “restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7.” NLRA Section 8(b)(1)(A). Of course, Section 7 is the cornerstone of the Act, which states in relevant part:

Employees shall have *the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities.*¹

The Complaint in Case 19-CB-250856 also alleges that the Unions engaged in conduct violating requirements imposed by Sections 8(b)(2) and 8(b)(3) of the Act. The hearing in Case 19-CB-250856, which was consolidated with 19-CA-249264, was scheduled in a Notice of Hearing that Region 19, by Regional Director Ronald Hooks, issued *more than six months ago*, on July 29, 2020.

Now, the Unions want the hearing to be postponed because they are the alleged wrongdoers against which the Complaint in Case 19-CB-250856 was issued. Therefore, the Unions argue an “extension of at least 30 days” is “necessary” to permit “newly appointed Acting General Counsel Peter Ohr” to determine whether this Complaint “should be revoked.” Union’s Motion at 1. The Unions’ articulated reasons for seeking a postponement are an affront to the Board’s central role as an *independent* regulatory agency charged with the even-handed

¹ NLRA Section 7 (emphasis added).

enforcement of the Act, which as noted above, was “*not* intended to serve either party's individual interest.” *First National Maintenance*, 452 U.S. at 680.

The Unions’ Motion to Extend Hearing Date should be denied for the following additional reasons.

First, in the instant case, UNFI has filed “UNFI’s Motion To Sever Case 19-CA-249264, To Transfer Case 19-CB-250856 To The Board, and for Summary Judgment In Case 19-CB-250856” (filed Feb. 1, 2021) along with a supporting brief and supporting declarations. Not only does this Motion places the instant matter before the Board, there is no reason to postpone the hearing in relation to Case 19-CB-250856, in the interim, because the Agency’s Rules & Regulations permit *the Board* to issue a Notice to Show Cause why the motion may not be granted, in which case the hearing, at that juncture, will normally be postponed indefinitely. *See* NLRB Rules and Regulations Section 102.24(b).

Second, as indicated above, the Unions’ Motion – when reduced to its essence – seeks an extension of the hearing merely because the Unions do not want to be prosecuted for the actions that have given rise to the Complaint issued against them. Granting such a request would undermine the Board’s responsibility to engage in the impartial, even-handed and quasi-judicial resolution of unfair labor practice cases. It warrants emphasis that the hearing before an administrative law judge (“ALJ”) merely provides the opportunity to have the ALJ render a recommended decision and order, from which parties can file exceptions with the Board, after which the Board makes the final disposition of the merits. If the Unions disagree with the allegations set forth in the Complaint (which one would expect every respondent to do in every unfair labor practice case), the proper course is to permit the litigation to proceed, and the Unions will have the opportunity to assert their arguments and defenses for resolution by the Board. The

Board is the ultimate authority that decides the merits of alleged violations, and the Board should resolve Complaint's allegations – including the Unions' arguments defenses – without efforts to prematurely extinguish the litigation to prevent the merits from being addressed.

Third, a pending federal court case involves the same dispute that has given rise to Case 19-CB-250856: *United Natural Foods, Inc. v. Teamsters Local 117 and Local 313*, No. 2:19-cv-01736 (W.D. Wash.). In this court litigation, the Court by order entered November 16, 2020 stayed all of its proceedings *pending the Board's resolution of Case 19-CB-250856*. Thus, granting the Unions' request to postpone the hearing – merely because the Unions wish to extinguish the claims against them without litigating them – not only will prejudice UNFI and the employees whose interests are at stake in Case 19-CB-250856, the postponement delay the resolution of the pending court case, causing prejudice to the parties whose interests rely on the disposition of that proceeding.

Fourth, there is no merit in the Unions' suggestion that preparing for a hearing in Case 19-CB-250856 will require parties to expend substantial "time and resources." Union's Motion at 3. As explained more fully in UNFI's pending Motion for Summary Judgment, the Unions themselves admitted, in the court case referenced above, that no genuine dispute as to material facts existed, and they agreed that the case warranted resolution by way of summary judgment.

Fifth, equally meritless is the Unions' claim that an extension and reconsideration of the Complaint in Case 19-CB-250856 should be granted because the Complaint involves a "novel theory of the law" that represents a "departure from longstanding NLRB authority." Union's Motion at 2. The central tenet underlying the Complaint against the Unions in Case 19-CB-250856 involves a black-letter NLRA principle – *i.e.*, that a labor contract applicable to a bargaining unit in one location cannot lawfully provide that the contract applies to a second

group of employees at a different location, absent a showing of union majority support among second group of employees. This principle was articulated 45 years ago by the Board in *Kroger Co.*, 219 NLRB 388 (1975), and it has been reaffirmed in countless more recent Board and court cases. Again, to the extent that the Unions dispute the merits of this proposition, the proper course is to permit the litigation to proceed, and the Unions will have the opportunity to assert their defenses and arguments to the Board.

Finally, the cornerstone of the Unions' Motion to Extend is "President Biden's appointment of Acting General Counsel Peter Ohr" and the Unions' contention that "newly appointed Acting General Counsel Peter Ohr" should "review the case . . . to determine whether the Complaint in Case Number 19-CB-250856 should be revoked" (Unions' Motion at 1). Thus, the Unions' Motion places at issue the appropriateness of Acting General Counsel Peter Ohr's appointment based on the January 20, 2021 removal of General Counsel Peter Robb, whose four-year term as General Counsel – as established in Section 3(d) of the Act – does not expire until on or about November 16, 2021. Respectfully, UNFI challenges and reserves all rights regarding any hearing extension, review and/or possible revocation of the Complaint by the Office of the General Counsel (including persons acting on behalf of the General Counsel or Acting General Counsel) following the January 20, 2021 removal of General Counsel Peter Robb.² Moreover, even in relation to the type of review sought by the Unions, nothing warrants an extension of the hearing date to permit a reconsideration of the Complaint's issuance in Case 19-CB-250856.

² UNFI similarly reserves all rights regarding other decisions, rulings, determinations, actions or other matters that may be addressed by the Office of the General Counsel (including persons acting on behalf of the General Counsel or Acting General Counsel) following the January 20, 2021 removal of General Counsel Peter Robb.

The proper course is to permit the litigation to proceed, and the Unions will have the opportunity to assert any defenses and arguments for ultimate resolution by the Board.

Accordingly, UNFI opposes the Unions' Motion to Extend Hearing Date, and respectfully requests that the Motion be denied.

Respectfully submitted,



PHILIP A. MISCIMARRA (cell 773.255.7112)

LAUREN M. EMERY (cell 802.598.9807)

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, NW

Washington, DC 20004

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202.739.3001 (fax)

philip.miscimarra@morganlewis.com

lauren.emery@morganlewis.com

Dated: February 1, 2021

CERTIFICATE OF SERVICE

I certify that a true and correct copy of “UNFI’S Opposition To Unions’ Motion To Extend Hearing Date” was served upon the following counsel via email and e-filing on the date set forth below.

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Ben Berger, Attorney
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/s/ Lauren M. Emery
Lauren M. Emery

Dated: February 1, 2021

From: (b) (6)
To: [Ohr, Peter S.](#)
Subject: Congratulations from Baltimore
Date: Tuesday, February 2, 2021 6:19:12 PM
Attachments: [image001.png](#)

Peter,

It must have been about midnight on inauguration day when I decided I'd seen enough of the festivities and switched off the television. News junkie that I am, before turning in I reflexively checked the news feed on my phone and saw the headline about Peter Robb's removal. I exclaimed to myself, "This day just keeps getting better and better!" Well, if there was anything that could crown that good news, it was learning of your appointment as Acting GC. What an exciting time to be at the NLRB. It's great to know that the GC's office is back in the hands of someone who cares as deeply as you do about the Agency and the workers it protects. Having just read through GC 21-02, it is clear that you are wasting no time in correcting the damage done to workers' rights since November 2017. The Agency is lucky to have someone with your energy, insight and managerial talent to lead it through the transition.

I'm going to enjoy watching from the side lines. Best of luck.



(b) (6)

(b) (6)

From: [Miscimarra, Philip A.](#)
To: [Ohr, Peter S.](#); [Bock, Richard](#)
Cc: [Lauren Emery](#)
Subject: Teamster Locals 117 and 313 (United Natural Foods, Inc.), Case 19-CB-250856
Date: Wednesday, February 3, 2021 9:49:09 AM

Dear Acting General Counsel Ohr and Associate General Counsel Bock:

We have learned that, in the above-captioned matter (Case 19-CB-250856), Teamsters Local 117 and 313 (the “Unions”) have requested the Office of the General Counsel to reconsider and revoke the Board’s Complaint against the Unions, whose actions are alleged to have violated Sections 8(b)(1)(A), 8(b)(2) and 8(b)(3) of the Act.

United Natural Foods, Inc. (“UNFI”) opposes the Unions’ request for reconsideration and revocation of the Complaint. Preliminarily, we note that no extraordinary circumstances warrant reconsideration of the Complaint’s issuance. Moreover, the Complaint reflects a black-letter NLRA principle – *i.e.*, that a labor contract applicable to a bargaining unit in one location cannot lawfully be applied to employees working in a separate unit of employees located elsewhere, absent a showing of union majority support among the second unit’s employees. This principle was articulated 45 years ago by the Board in *Kroger Co.*, 219 NLRB 388 (1975), and it has been reaffirmed in countless other cases. See, e.g., *Raley’s*, 336 NLRB 374, 375-378 (2001); *Joseph Magnin Co.*, 257 NLRB 656, 656-57 (1981); *NLRB v. Retail Clerks Local 588*, 587 F.2d 984, 968 (9th Cir. 1978); *Sperry Systems v. NLRB*, 492 F.2d 63, 68 (2d Cir. 1974); *Welch Scientific Co. v. NLRB*, 340 F.2d 199, 203 (2d Cir. 1965). It bears emphasis that the pending Complaint does not merely involve a labor-management dispute. The Unions are alleged to have violated Section 8(b)(1)(A) of the Act, which makes it unlawful for any union to “restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7” (NLRA Section 8(b)(1)(A) (emphasis added)), among other violations.

Four additional considerations warrant denying the Unions’ request to reconsider and revoke the Complaint.

First, the Board should reject out of hand the obvious reason that underlies the Unions’ request to reconsider and revoke the Complaint: the Unions want to avoid prosecution for their own actions which have given rise to the Complaint against them. Every respondent in an unfair labor practice case opposes issuance of the complaint. Here, the Complaint was issued following investigation by the Agency’s Region 19, the Complaint was authorized by the General Counsel’s Division of Advice, and all of the claims raised by the Unions in opposition to the Complaint can be and should be considered by the Board, which has ultimate authority for resolving such claims.

Second, this case is now pending directly before the Board, which makes it even more inappropriate to prematurely terminate the litigation. On February 1, 2021, UNFI filed a “Motion to Sever Case 19-CA-249264, To Transfer Case 19-CB-250856 To The Board, and for Summary Judgment In Case 19-CB-250856” along with a supporting brief and supporting declarations. If the Unions disagree with the allegations in the Complaint (which one would expect every respondent to do in every unfair labor practice case), the litigation should proceed, which permits the Board to consider each and every argument the Unions have raised in opposition to the Complaint.

Third, the Unions' request to have the Complaint reconsidered and revoked not only would prevent important rights and obligations from being adjudicated, the Unions' request seeks to usurp the NLRB's central role as an independent regulatory agency charged with the even-handed enforcement of the Act. In this respect, the Unions' request is an affront to the central premise underlying the National Labor Relations Act, which "is not intended to serve either party's individual interest, but to foster in a neutral manner a system in which the conflict between these interests may be resolved." *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 680-681 (1981) (emphasis added).

Fourth, the Unions have placed the Office of the General Counsel in the untenable position of being asked to extinguish a pending case for reasons that the Unions themselves have described in blatantly political terms. Thus, in the Unions' Motion to Extend Hearing Date (where the Unions sought a hearing postponement in order to seek the Complaint's revocation), the Unions justified these actions on page 1 by emphasizing "President Biden's appointment of Acting General Counsel Peter Ohr," with the implication that "newly appointed Acting General Peter Ohr" was likely to revoke the Complaint notwithstanding its issuance after investigation by NLRB Region 19, after its consideration by the Board's Division of Advice, and after its issuance by Regional Director Ronald Hook (Regional Director for Region 19). Thus, the Unions' request directly places at issue the appropriateness of the Acting General Counsel's appointment following the January 20, 2021 removal of General Counsel Peter Robb, notwithstanding the fact that Mr. Robb's four-year term as General Counsel – established in Section 3(d) of the Act – does not expire until on or about November 16, 2021. Therefore, UNFI respectfully challenges, and reserves all rights, regarding any reconsideration, review and/or revocation of the Complaint by the Office of the General Counsel (including persons acting on behalf of the General Counsel or Acting General Counsel) following the January 20, 2021 removal of General Counsel Peter Robb, and UNFI similarly reserves all rights regarding other matters that may be addressed by the Office of the General Counsel (including persons acting on behalf of the General Counsel or Acting General Counsel) after January 20, 2021.

As noted above, UNFI respectfully submits that nothing warrants reconsideration or revocation of the Complaint, and the Unions' request for reconsideration and revocation of the Complaint should be summarily denied. However, while reserving and without waiving the objections stated above, UNFI requests the opportunity, if consideration is given to the Unions' request, to address all issues raised by the Unions, and UNFI requests the opportunity to address all such issues in writing and in a meeting held by videoconference, conference call or in person.

UNFI also hereby requests, pursuant to the Freedom of Information Act ("FOIA"), a copy of all exchanges and documents between any representatives of the Unions and the NLRB (including any NLRB Regional office) and/or the Office of the General Counsel after October 28, 2019, the date of the charge filed in Case 19-CB-250856, and this request includes but is not limited to all such exchanges and documents regarding issuance, review, reconsideration and/or revocation of the Complaint. UNFI also respectfully requests the expedited processing of this request as provided in FOIA.

Very truly yours,

Philip A. Miscimarra
Partner

Morgan, Lewis & Bockius LLP

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