UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TRADER JOE'S EAST, INC.

and Case 09-CA-335100

TRADER JOE'S UNITED

Erik P. Brinker, Esq., for the Acting General Counsel
Sarah Beth Ryther, for the Charging Party
Christopher J. Murphy, Esq. and Kelcey J. Phillips, Esq. (Morgan, Lewis & Bockius, LLP), for Respondent

DECISION

STATEMENT OF THE CASE

Sarah Karpinen, Administrative Law Judge. The allegations in this case are based on a charge filed by Trader Joe's United (the Union) alleging that Trader Joe's East (Respondent) failed and refused to bargain in good faith with the Union as the collective bargaining representative of its employees and failed to provide requested information. This case was originally consolidated for hearing with Case 09-CA-312856 by the Regional Director for Region 9, who issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated December 6, 2024. (GC Exh. 1(g)). Respondent timely filed an Answer, which it amended on March 6, 2025. (GC Exh. 1(p)).

On March 7, 2025, Respondent Trader Joe's filed a motion to sever the refusal to bargain allegations in Case 09-CA-335100 from the remainder of the allegations in the Consolidated Complaint. I declined to sever the cases for the hearing, which opened on March 10, 2025, in Louisville, Kentucky, and continued on March 11 and April 8, 2025. All parties had the opportunity to appear, introduce evidence, call and examine witnesses, and file post-hearing briefs concerning the allegations in the Consolidated Complaint.

After the hearing, I ordered that Case 09-CA-335100 be severed from Case 09-CA-312856 for the reasons outlined in my Order dated September 4, 2025, and attached to this decision as Appendix A. After carefully considering the entire record, including the parties' briefs, I make the following findings of fact, conclusions of law, and recommendations in Case 09-CA-335100. My decision in Case 09-CA-312856 will follow at a later date.

I. JURISDICTION

At all times material to this matter, Respondent has been engaged in the operation of retail grocery stores from its place of business in Louisville, Kentucky. The Complaint alleges that during the twelve months preceding the Complaint, Respondent derived gross revenues in excess of $500,000 and purchased and received "goods and materials valued in excess of $50,000 directly from points outside the Commonwealth of Kentucky." (Complaint, para. 2(b)). In its Amended Answer, Respondent admitted that "during the past twelve months, a representative period, Respondent, in conducting retail grocery operations, has derived gross revenues in excess of $500,000 and has received goods at its Trader Joe's Louisville Store from enterprises who received goods valued in excess of $50,000 that are produced and distributed from locations outside the State[1] of Kentucky." (Amended Answer, para 2(b)). Respondent admits, and I find, that at all material times, it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. BARGAINING ALLEGATIONS

The Complaint alleges that since February 2, 2024, Respondent has failed and refused to recognize and bargain with the Union following the Union's certification as the collective bargaining representative of its employees and has failed to provide relevant information that the Union requested in violation of Sections 8(a)(5) and (1) of the Act. (Consolidated Complaint, paras. 6, 7, 8, 10, GC Exh. 1(g)).

On December 20, 2022, the Union filed a petition in Case 09-RC-309216 seeking an election at Respondent's Shelbyville Road store in Louisville. (GC Exh. 3). An election was held pursuant to a stipulated election agreement on January 25 and 26, 2023. A majority of votes were cast for the Union. (GC Exh. 4). Respondent filed timely objections, and a Hearing Officer issued a report on May 26, 2023, recommending that the objections be overruled in their entirety. (GC Exh. 5). On January 17, 2024, the Regional Director for Region 9 overruled the objections and issued a Certification of Representative to the Union for the following unit:

> All full-time and regular part-time crew and merchants employed by [Respondent] at its 4600 Shelbyville Road, Suite 111, Louisville, Kentucky facility (Store No. 628); excluding all mates, captains, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

(GC Exh. 5). Respondent admits that the unit is appropriate for collective bargaining purposes. (Amended Answer, para. 6, GC Exh. 1(p)).

[1] The Complaint identifies Kentucky as a commonwealth, and Respondent identifies it as a state. The difference in terminology is not relevant to whether the Board has jurisdiction over this matter. Kentucky, Massachusetts, Pennsylvania and Virginia are commonwealths, a designation that does not carry any legal significance, but was chosen as a statement that their governments serve "the well-being of the people." See What's in a Name? The Four U.S. States That Are Technically Commonwealths | In Custodia Legis.

On February 8, 2024, Respondent filed a Request for Review of the Regional Director's Decision and Certification of Representative. It acknowledges that the Regional Director issued an "administrative certification of representative," but asserts that the certification "is yet to be determined" because its Request for Review[2] is still pending. (R. Brief, p. 3).

As part of its bargaining request on January 23, the Union requested information from Respondent to prepare for bargaining. (GC Exh. 6). Respondent admits that the Union made an information request but denies that it has any obligation to provide information to the Union and further states that the requested information is "not presumptively relevant and the Union has failed to establish the relevancy of its requests." (Amended Answer, para. 8).

A. Respondent is obligated to recognize and bargain with the Union

The Board has consistently held that "an employer is not relieved of its obligation to bargain with a certified representative pending Board consideration, or reconsideration, of a request for review." *Saint Mary Home & Teamsters Loc. 671*, 353 NLRB No. 53, n. 2 (2008), quoting *Benchmark Industries*, 262 NLRB 247, 248 (1982), enfd. mem. 724 F.2d 974 (5th Cir. 1984) (internal quotation marks omitted). An employer that refuses to bargain with a certified Union acts "at its peril," and the only proof required to establish a violation "is the respondent's admitted refusal to meet with the certified union…" *Audio Visual Servs. Grp., Inc*., 365 NLRB 810, 810-811 (2017), citing *Allstate Insurance Co.*, 234 NLRB 193, 193 (1978).

Respondent admits to refusing to bargain and acknowledges that the "limited record regarding the basis for the Company's refusal to bargain has been made." (R. 23). Therefore, I find that the Acting General Counsel has established that Respondent has failed and refused to recognize and bargain with the Union as the certified representative of its employees.

1. A pending Request for Review is not a defense to the 8(a)(5) charges

Respondent defends its refusal to bargain by stating that it is testing what it believes is an improper certification by exercising its right to seek review of that certification from the Board. (R. Brief, p. 23). However, Board precedent is clear that a pending request for review does not justify a refusal to bargain, even when "there has been no final action by the Board on review…" *Allstate Insurance Co*., supra, 234 NLRB at 193.

a. *Howard Plating* is not applicable

Respondent argues that this case is not governed by *Allstate*, and that the correct precedent is *Howard Plating*, 230 NLRB 178 (1977), where the Board found that the employer did not violate the Act by refusing to bargain while waiting for a ruling on a "Regional

[2] In its Amended Answer, Respondent states that it filed a "Request for Review of the Regional Director's Decision and Direction of Election in Case 09-RC-309216." (Amended Answer, Para. 6(b), GC Exh. 1(p), p. 3). The only Request for Review on the docket is Respondent's February 8 Request for Review Regional Director's Decision and Certification of Representative, so it appears that the reference to a request to review a Direction of Election was an error.

Director's report" in the underlying representation case. However, the complaint allegations in *Howard Plating* arose *before* a certification was issued in the representation proceeding. See *Id*. at 179, n. 2. Therefore, it is not applicable to a case like this one where the certification was issued *before* the alleged refusal to bargain.

In *Allstate Insurance*, the Board specifically rejected the application of *Howard Plating* when the alleged refusal to bargain occurred after the certification of representative issued, noting that the Administrative Law Judge (ALJ) failed to consider the "importance of the outstanding certification." See *Allstate*, supra, 234 NLRB at 193. In *Madison Detective Bureau, Inc*., 250 NLRB 398 (1980), the Board again declined to apply *Howard Plating* and instead applied *Allstate* when the employer refused to bargain after a certification of representation issued, explaining that in *Howard*, the Board was considering whether or not to issue the certification at the time of the alleged refusal to bargain, while in *Allstate*, review of an outstanding certification was pending at the time of the unfair labor practice. *Id*. at 399, n. 4.

More recently, in *Audio Visual Servs.,* supra, 365 NLRB at 811 (2017), the Board declined to apply *Howard Plating* when an employer refused to bargain while its request for review of a certification of representative was pending and confirmed that *Allstate* was the appropriate precedent when a refusal to bargain occurs after the issuance of the certification of representative. The Board also rejected the employer's argument that the certification of representative was not final because the employer had the right to seek review of the Regional Director's action. *Id*.

b. Current Board rules state that the certification is final unless the Board grants a request for review

Under Section 102.69(c)(2) of the Board's Rules and Regulations, a decision "of the Regional Director disposing of challenges and/or objections may include a certification of the results of the election, including certification of representative where appropriate, and shall be final unless a request for review is granted." Respondent argues that this rule should be disregarded for "prudential reasons," because in 2019, the Board promulgated a rule preventing a certification of results from being issued while a request for review was pending. Although Respondent acknowledges that this rule was invalidated in *AFL-CIO v. NLRB*, 57 F.4th 1023, 1038-1041 (D.C. Cir. 2023), it argues that the potential appointment of new Board members makes it "reasonable to assume that this issue will again revert." (R. Brief, p. 25).

As an ALJ, I am bound to follow existing Board rules and case precedent, which state that the certification of results is final unless a request for review is granted, and that a pending request for review does not affect the ripeness of a refusal to bargain charge. See *Cocoanut Grove,* 270 NLRB 345, 347 (1984).

B. Almost all of the requested information is presumptively relevant

An employer's obligation to bargain includes an obligation "to provide relevant information needed by a labor union for the proper performance of its duties as the employees' bargaining representative." *Detroit Edison*, 440 U.S. 301, 303 (1979). Requests for information

about unit employees' wages, benefits and other terms and conditions of employment are presumptively relevant, and the Union is not required to make a specific showing of relevance. See, e.g., *Sunset Station Hotel & Casino*, 367 NLRB No. 62, slip op. at 1-2 (2019), enfd. mem. 792 Fed.Appx. 557 (9th Cir. 2020)*; Mathews Readymix, Inc*., 324 NLRB 1005, 1009 (1997), enfd. in relevant part 165 F.3d 74 (D.C. Cir. 1999). Presumptively relevant information must be provided unless the employer rebuts the presumption of relevance or provides a valid reason for failing to provide it. See *United Parcel Service*, 362 NLRB 160, 162 (2015).

Although Respondent asserts that the information requested by the Union was not presumptively relevant, it failed to specify which items it believes are not relevant. After reviewing the request, I find that almost all of the information the Union requested is presumptively relevant to its role as collective bargaining representative. Request numbers 1-20 and 23 seek information about the names of and contact information for the employees in the bargaining unit and their dates of hire, work hours, and rates of pay, information about the total number of hours worked at the store by all employees, employee job descriptions, wage progressions and pay scales, Respondent's work rules and employment policies, information about employee benefits, including pensions and retirement plans, health benefit plans, profit sharing, tuition assistance, and child care plans, disciplinary reports, OSHA logs, reports of work-related injuries and illnesses, and employee transfer information. (GC Exh. 6).

The information described above directly relates to employees' terms and conditions of employment and is therefore presumptively relevant. See, e.g., *Sunset Station Hotel & Casino*, supra, 367 NLRB No. 62, slip op. at 1-2 (2019) (names and contact information of unit employees, benefit plans including legal services and child care plans, disciplinary notices, job descriptions, wage and salary plans were presumptively relevant); *Red Rock Casino Resort & Spa,* 368 NLRB No. 52, slip op. at 2 (2019) (employee names, dates of hire, rates of pay, job classifications, personnel policies, benefit plans, job descriptions, salary plans, and disciplinary notices); *CVS Albany*, 364 NLRB No. 122, slip op. at 1-2, (2016), enfd. mem. 709 Fed.Appx. 10 (D.C. Cir. 2017) (per curiam) (names and contact information of unit employees, pay rates, information about benefits and work hours, and employment policies and manuals); *Boeing Company*, 363 NLRB 651, 656 (2015) ("movement, relocation or realignment of work"); *Metro Health Foundation*, 338 NLRB 802, 803 (2003) (OSHA logs, job descriptions and budgetary information); *Maple View Manor*, 320 NLRB 1149, 1150-1151 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997) (per curiam) (employee hours and staffing patterns); *Kansas Education Association* 275 NLRB 638, 640 (1985) (employee transfer information).

Item 22 of the Union's request seeks information about employees who were on "loan" to the Louisville store from other stores. (GC Exh. 6). It is unknown if these employees are part of the bargaining unit while working in Louisville, but even if they were not, the Board has found that "information regarding individuals who are engaged in performing the same tasks as rank-and-file employees within the bargaining unit" is presumptively relevant because it relates directly to the terms and conditions of unit employees. See *United Graphics*, 281 NLRB 463, 465 (1986) (information about temporary workers performing bargaining unit work presumptively relevant). Therefore, I find that this request was presumptively relevant.

Item 21 seeks records of "complaints originating from bargaining unit employees" that concern harassment or discrimination based on race or sex, "bullying and/or other misconduct by

Captains, managers, supervisors, Regional management, Corporate HW employees and/or customers." (GC Exh. 6). The Board has found that information about harassment complaints is not "presumptively relevant under prevailing Board law even if expressly limited to charges and complaints filed by unit employees." *Polymers, Inc*., 319 NLRB 26, 27, n. 2 (1995); see also *Mission Foods,* 345 NLRB 788, 791 (2005); *Maple View Manor*, supra, 320 NLRB at 1151, n. 2.

When a union requests information that is not presumptively relevant, it bears the burden of demonstrating its relevance. This is not a heavy burden and can be established by the wording of the request itself or by "the testimony of union officials at the unfair labor practice hearing." See *Delaware County Memorial Hospital*, 371 NLRB No. 129, slip op. at 4 (2022), enfd. mem. 2023 WL 3018280 (3d Cir. 2023). The Union's request does not include an explanation for why the information in Item 21 is relevant, and the CAGC did not offer any witness testimony about it at the hearing. Therefore, the Acting General Counsel has failed to establish that Respondent was obligated to provide the information in Item 21 of the Union's request. However, the inclusion of an item that is not presumptively relevant does not excuse Respondent's failure to provide the Union with the information that was presumptively relevant. See *Polymers,* supra, 319 NLRB at 27; see also *Postal Service*, 337 NLRB 820, 824 n. 10 (2002).

Finally, Respondent's pending challenge to the Union's certification does not justify its failure to provide the requested information. An employer's duty to provide information, as with the duty to bargain in good faith, "attaches with the issuance of the certification of representative." *Palace Station Hotel & Casino*, supra, 368 NLRB No. 148, slip op. at 7, citing *Didlake, Inc.*, 367 NLRB No. 125, slip op. at 1, n. 2 (2019); see also *United Cerebral Palsy of New York City, Inc*., 343 NLRB 1, 2 (2004) (failure to provide information not excused by collateral litigation challenging the validity of the Union's certification).

III. There is no basis to hold the bargaining allegations in abeyance

I am rejecting Respondent's argument that this case should be held in abeyance until the Board rules on its Request for Review in Case 09-RC-309216. Respondent does not cite, nor could I find, any Board case or rule stating that an ALJ has the authority to hold bargaining allegations in abeyance while a request for review of a certification is pending. To the contrary, the Board has held that a because a request for review "stays neither a certification nor the resulting obligation to bargain," it "does not affect the ripeness of a complaint alleging an unlawful refusal to bargain." *Cocoanut Grove*, supra, 270 NLRB at 347. The Board has also consistently found that an employer who relies on a pending request for review as a basis for refusing to bargain does so "at its peril." *Audio Visual Servs. Grp., Inc*., supra, 365 NLRB at 811, citing *Allstate Insurance Co.*, supra, 234 NLRB at 193.

Respondent contends that any decision in the bargaining case will be "premature, advisory, and conditional" because the Board has not yet ruled on its Request for Review. (R. Brief, p. 24). Under Section 102.45(a) Board's Rules and Regulations, I have the responsibility to issue a decision containing my "findings of fact, conclusions of law, and the reasons or grounds for the findings and conclusions, and recommendations for the proper disposition of the case." Any decision I issue can be impacted by subsequent litigation, exceptions filed by the parties, or other circumstances that may arise after the decision issues- but that does not alter my obligation to issue a decision based on the hearing record before me.

Holding the bargaining allegations in abeyance would only serve to create confusion and delay for the unit employees, who have been waiting since January 2023 for the litigation surrounding the representation election to conclude. Respondent argues that the bargaining allegations could be resolved "via the established summary judgment procedure" if the Board upholds the certification, which Respondent claims would be the "simplest and most direct path to resolve this issue without prejudice to the Company's right to pursue its test of certification…." (R. Brief, p. 23). I see no value in forcing the Acting General Counsel to initiate a separate summary judgment proceeding when the unfair labor practice case has already been heard and can be reviewed by the Board on exceptions, if the parties choose to file them.

Respondent is not prejudiced by litigating this case in an unfair labor practice hearing instead of in a summary judgment proceeding. It had the opportunity to present evidence related to the 8(a)(5) allegations at the hearing, an opportunity it would not have had on summary judgment, and also had several opportunities to present its legal arguments. While I understand that it would prefer not to have an adverse Administrative Law Judge Decision, it will have the opportunity to present its arguments directly to the Board if it files exceptions and, if it wants to appeal the Board's ruling, to the appropriate Court of Appeals.

Respondent correctly points out that in *Allstate*, supra, 234 NLRB 193, and in other cases addressing this issue, the parties had the benefit of a Board ruling on the request for review before the unfair labor practice hearing. (R. Brief, p. 24). However, the Board stated in *Allstate* that "the real issue…is the importance of an outstanding certification. If an employer declines to meet for bargaining in the face of a Regional Director's certification…**even though there has been no final action by the Board on review**, the General Counsel need not show bad faith in support of a refusal-to-bargain allegation." *Id*. at 193 (emphasis added). Therefore, there is no basis for me to hold this case in abeyance while Respondent's Request for Review is pending.

CONCLUSIONS OF LAW

1. Trader Joe's East, Inc. (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Trader Joe's United (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the exclusive collective bargaining representative of the employees in the following appropriate bargaining unit:

   All full-time and regular part-time crew and merchants employed by Respondent at its 4600 Shelbyville Road, Suite 111, Louisville, Kentucky facility (Store No. 628); excluding all mates, captains, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

4. By failing and refusing to recognize and bargain with the Union as the exclusive collective bargaining representative of the employees in the appropriate unit, Respondent violated Section 8(a)(1) and (5) of the Act.

5. By failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the performance of its duties as the exclusive collective bargaining representative of the Unit, Respondent has been failing and refusing to bargain collectively with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

6. The unfair labor practices described above affect commerce within the meaning of Sections 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has violated Section 8(a)(5) and (1) of the Act, Respondent is ordered to cease and desist to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. Respondent is further ordered to timely furnish the Union with the information it requested in items 1-20 and 22-23 of its January 23, 2024, information request.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, the initial period of the certification shall be construed as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); accord *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[3]

ORDER

Respondent Trader Joe's East, Inc. and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing and refusing to recognize and bargain with Trader Joes United (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Refusing to bargain collectively with the Union by failing and refusing to provide it with requested information that is relevant and necessary to the performance of its functions as the collective bargaining representative of Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time crew and merchants employed by Respondent at its 4600 Shelbyville Road, Suite 111, Louisville, Kentucky facility (Store No. 628); excluding all mates, captains, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

(b) Furnish the Union in a timely manner with the information it requested in items 1-20 and 22-23 of its January 23, 2024, information request.

(c) Within 14 days after service by the Region, post at its Louisville facility copies of the attached notice marked "Appendix B."[4] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice shall be mailed to all current employees and former employees employed by the Respondent at any time since February 2, 2024.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 5, 2025

Sarah Karpinen

Sarah Karpinen
Administrative Law Judge

APPENDIX A
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TRADER JOE'S EAST, INC.

and Cases 09-CA-312856
09-CA-335100

TRADER JOE'S UNITED

ORDER TO SEVER

On February 21, 2023, Trader Joe's United (the Union) filed a charge in Case 09-CA-312856 alleging that Respondent Trader Joe's East disciplined employees in retaliation for their union and/or protected concerted activities. (GC Exh. 1(a)). On February 2, 2024, the Union filed a new charge in Case 09-CA-335100 alleging that Respondent unlawfully failed and refused to recognize or bargain in good faith with the Union as the collective bargaining representative of its employees, and amended the charge on August 29, 2024, to include an allegation that Respondent failed to provide information to the Union. (GC Exh. 1(c), (e)). On December 6, 2024, the Regional Director for Region 9 issued an Order Consolidating Cases 09-CA-312856 and 335100, Consolidated Complaint and Notice of Hearing. (GC Exh. 1(g)).

The Union and Respondent are also party to a related representation case, Case 09-RC-309216. After a representation election on January 25 and 26, 2023 at Respondent's Shelbyville Road store in Louisville, Kentucky, a majority of votes were cast for the Union. (GC Exh. 4). Respondent filed objections, which were overruled by the Regional Director in a Decision and Certification of Representative issued on January 17, 2024. Respondent filed a Request for Review, which is currently pending before the Board.

The unfair labor practice hearing began on March 10, 2025. (GC Exh. 1(i)). On March 7, 2025, Respondent moved to sever the retaliation allegations in Case 09-CA-312856 from the refusal to bargain allegations in Case 09-CA-335100. At the hearing, the parties presented oral arguments on the motion for severance. Respondent argued that the cases should be severed, and the bargaining allegations held in abeyance while its Request for Review in 09-RC-309216 is pending, because the charges have created a "Catch 22" where it must choose between bargaining with the Union and waiving its claim that the certification was invalid, or refusing to bargain and risking an adverse unfair labor practice finding. (Tr. 37-39).[5] Counsel for the Acting General Counsel (CAGC) opposed severance, arguing that Respondent refused to bargain with the certified representative of its employees at its own risk, and that any delay in the bargaining case would delay the right of employees to their chosen bargaining representative. (Tr. 40).

[5] This Order addresses only the severance issue. I will address Respondent's request to hold the bargaining allegations in abeyance pending the outcome of the representation case in my decision in Case 09-CA-335100.

I declined to sever the bargaining allegations before the hearing for efficiency reasons, as I wanted to ensure the parties had an opportunity to offer evidence about the bargaining allegations while the record was open. However, I advised the parties that I would consider severing the cases after the hearing and informed them that they could make additional arguments about the issue in their briefs. (Tr. 43-44). In its post-hearing Brief, Respondent continued to advocate for severance. CAGC did not address the motion in his brief.

1. Severance will allow for more efficient processing of both cases

An administrative law judge (ALJ), upon motion by a party, has the authority under Section 102.35(a)(8) of the Board's Rules and Regulations to sever complaint allegations after "considering such factors as the risk that matters litigated in [an earlier proceeding] will have to be relitigated…and the likelihood of delay if consolidation, or severance, is granted." See *Service Employees Local 87* (*Cresleigh Management*), 324 NLRB 774, 775–776 (1997); see also *Adair Standish Corp*., 283 NLRB 668, 670 (1987).

While I still find that it was appropriate to consolidate Cases 09-CA-335100 and Case 09-CA-312856 for hearing, as to do otherwise would risk having to reopen the record at a later date to receive evidence regarding the bargaining allegations, now that the hearing is over and the record is closed, I find that the purposes of the Act, including the fundamental objective of resolving questions of representation as quickly as possible, would best be effectuated by severing the cases for decisional purposes. See *Adair Standish*, supra, 283 NLRB at 671; see also *Independence Residences, Inc*., 355 NLRB 724, 725 n. 14 (2010) (ALJ did not err in severing cases for decisional purposes, even after declining to sever them prior to the hearing).

The unfair labor practice cases are based on different legal theories, and the resolution of one will not determine the outcome of the other. The facts related to the bargaining case are very straightforward, so my decision will be fairly brief and will involve more legal than factual analysis. Deciding the retaliation claim will involve reviewing testimony from numerous witnesses and analyzing several exhibits, at least one which is disputed. As there is no reason to keep the cases together now that the hearing is over, there is a chance that one or both will progress more quickly once severed, and the parties will not be prejudiced, I find that severance is appropriate. See *Storer Cable TV of Texas*, 292 NLRB 140, 140 (1988).

It is hereby ordered that Cases 09-CA-312856 and 335100 be severed and regarded as separate proceedings. Because the parties have already filed their briefs, the consolidated record will remain the official record for both cases to avoid any inconsistent citations, but separate Administrative Law Judge Decisions will be issued in each case.

Dated: September 4, 2025
Washington, D.C.

Sarah Karpinen

Sarah Karpinen
Administrative Law Judge

APPENDIX B

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO

- Form, join, or assist a union.
- Choose representatives to bargain with us on your behalf.
- Act together with other employees for your benefit and protection.
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT fail and refuse to recognize and bargain with Trader Joe's United (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to provide it with requested information that is relevant and necessary to the performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL on request bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time crew and merchants employed by Respondent at its 4600 Shelbyville Road, Suite 111, Louisville, Kentucky facility (Store No. 628); excluding all mates, captains, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

WE WILL provide the Union in a timely manner with the information it requested in items 1-20 and 22-23 of its January 23, 2024, information request.

TRADER JOE'S EAST, INC.
(Employer)

Dated: _____ By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

NLRB REGION 9
550 MAIN ST
Room 3-111
CINCINNATI, OH 45202-3271
Tel: (513) 684-3686
Hours of operation: 8:30am – 5:00pm ET

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/09-CA-335100 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer, (513) 684-3733.