VIA 313 Pizza Restaurant II, LLC *and* Restaurant Workers United. Case 16–CA–370467

September 23, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

This is a refusal-to-bargain case in which Via 313 Pizza Restaurant II, LLC (the Respondent) is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by Restaurant Workers United (the Union) on July 31, 2025, the General Counsel issued a complaint on August 4, 2025, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 16–RC–300851.[1] (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Sections 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On August 4, 2026, the General Counsel filed a Motion for Summary Judgment. On August 6, 2026, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but asserts that it had no obligation to do so.[2] Rather, it contests the validity of the certification of representative, primarily based on its contention that the Union accepted unlawful supervisory assistance from a FOH (Front of House) Shift Manager prior to a 2022 election, which the parties agreed to set aside and later re-run in March 2025. The Respondent further argues, incorrectly, that it has a right to present its unfair labor practice allegation of unlawful supervisory assistance from 2022 to the Board now because it was unable to do so during the underlying, March 2025 representation proceeding. The Respondent misunderstands Board law, and it has presented no claim sufficient to deny summary judgment here.[3]

[1] In its answer to the complaint, the Respondent denies knowledge and information as to the date the charge was filed and served by regular mail but admits that it received a copy of the charge on July 31, 2025, from the Region via email. Copies of the charge and affidavit of service are attached as Exhs. O(i)-(ii) to the General Counsel's motion, showing the filing date and service as alleged, and the Respondent has not contested the authenticity of those documents.

[2] The denials and affirmative defenses in the Respondent's answer do not raise any issues warranting a hearing. In pars. 8 and 9 of its answer, the Respondent denies that it has violated the Act and that its unfair labor practices affect commerce. However, the Respondent admitted that it refused the Union's request to bargain, which is sufficient to establish a violation of the Act. *Randalls Food & Drug, L.P.*, 369 NLRB No. 100, slip op. at 1 fn.1 (2020).

In its second affirmative defense, the Respondent asserts that the complaint fails to state a claim upon which relief can be granted. Because the Respondent admits that it has refused to recognize and bargain with the Union, "the complaint does indeed state claims upon which relief can be granted." *Wolf Creek Nuclear Operating Corp.*, 366 NLRB No. 30, slip op. at 1 fn. 2 (2018), enfd. 762 F. App'x 461 (10th Cir. 2019).

The Respondent's assertions that the complaint includes allegations that are beyond the scope of the charge (Def. 3) and should be dismissed as untimely and/or because the Region lacks jurisdiction over the allegations (Def. 4) are plainly wrong. The complaint only alleges what was alleged in the charge: that the Respondent failed and refused to recognize and bargain in good faith with the Union. As for timeliness, the charge was filed 10 days after the Respondent failed to respond to the Union's second request for bargaining, well within the Sec. 10(b) period. The Board's jurisdiction was established in the underlying representation proceeding, and the Respondent admits in its answer (par. 2) the facts underpinning jurisdiction in this test-of-certification proceeding.

As to the Respondent's fifth affirmative defense, regarding Board member and administrative law judge removal protections, there is no evidence that the Respondent suffered any harm from their removal protections. See *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1 fn. 4 (2023) (citing *Collins v. Yellen*, 594 U.S. 220, 257-258 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), rev'd per curiam on other grounds 598 U.S. 623 (2023)); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 148-149 (4th Cir. 2023) ("[R]egardless of how we answer the constitutional question presented by the removal provisions, we would be required to deny the petition because K & R has not asserted any harm resulting from the allegedly unconstitutional statutes.").

With respect to affirmative defenses 6 through 8, the Respondent has not offered any explanation or evidence to support these bare assertions. We therefore find them insufficient to warrant denial of the General Counsel's Motion for Summary Judgment. See, e.g., *Sysco Central California, Inc.*, 371 NLRB No. 95, slip op. at 1 fn. 1 (2022); *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1 fn. 1 (2018), enfd. sub nom. *Operating Engineers Local 501 v. NLRB*, 949 F.3d 477 (9th Cir. 2020).

[3] The Respondent's argument that it has a right to litigate its assertion of unlawful supervisory assistance in 2022 before the Board in this test-of-certification case is incorrect. The Board cannot hear unfair labor practice allegations absent a complaint from the General Counsel in whom the Act vests final authority to investigate charges and issue complaints and whose prosecutorial decisions are insulated from review by the Board or the courts. See generally 29 U.S.C. § 153(d); *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112 (1987). Here, the General Counsel dismissed the Respondent's charge containing unlawful assistance allegations after the Respondent and the Union entered into a settlement agreement that withdrew their objections to the 2022 election and set a re-run election. The Board may not review

Moreover, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it established any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[4]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Texas limited liability company with an office and place of business located at 3016 Guadalupe Street, Suite 100, Austin, Texas 78705 (the North Campus facility), and has been engaged in the business of operating a pizza restaurant.

In conducting its operations during the previous 12-month period, the Respondent derived gross revenues in excess of $500,000. In conducting its operations during the same period of time, the Respondent purchased and received at its North Campus facility goods valued in excess of $ 5000 directly from outside the State of Texas.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.[5]

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the re-run representation election conducted by secret ballot on March 18, 2025,6 the Regional Director issued a Certification of Representative in Case 16–RC–300851 on July 2, 2025, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> INCLUDED: All full-time and regular part-time Cashiers, Hosts, Hostesses, Servers, Server Assistants, Bartenders, Cooks, Doughs, and Dishwashers.
>
> EXCLUDED: All General Managers, Assistant General Managers, Assistant Managers, Kitchen Managers, MIT Managers in Training, Training Managers, BOH Trainees, FOH Trainees, BOH Trainers, FOH Trainers, Corporate Trainers, Guards, and Supervisors as defined by the Act.[7]

On July 29, 2026, the Board denied the Respondent's request for review of the Regional Director's Decision and Certification of Representative. The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.[8]

B. Refusal to Bargain

On July 11, 2025, and again on July 21, 2025, the Union, by email, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. To date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since July 11, 2025, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

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that decision simply because the Respondent has repackaged its unfair labor practice allegation as an affirmative defense.

[4] We deny the Respondent's request to dismiss the complaint.

[5] The Respondent denies the Union's status as a labor organization within the meaning of the Act, but that denial is not a barrier to summary judgment because the argument was not timely raised in the representation proceeding.

[6] An initial secret ballot election was conducted by mail between September 29 and October 27, 2022. Following the Union and Respondent's objections to that election, the parties signed a stipulation that, in relevant part, withdrew their objections, set aside the initial election, and agreed to a rerun election.

[7] Because the parties could not agree prior to the election, the Regional Director deferred resolution of the supervisory status of BOH and FOH Shift Managers and permitted them to vote subject to challenge. Their ballots were not determinative of the election results, and they are neither included in nor excluded from the unit.

[8] In its answer to the complaint, the Respondent denies the paragraphs alleging that the bargaining unit is appropriate and that the Union is the exclusive collective-bargaining representative of the unit and raises the affirmative defense that it has no obligation to bargain. All representation issues were fully litigated and resolved in the underlying representation proceeding; thus, we conclude that the Respondent's denials of the allegations in pars. 5 and 6(b) of the complaint and its first affirmative defense do not raise any issues warranting a hearing. To the extent the Respondent suggests that it had no obligation to bargain while its request for review was pending (pars. 6(a), 7(a)-(c), 8), we note that its duty to bargain attached when the certification of representative issued. See *Allstate Insurance Co.*, 234 NLRB 193, 193 (1978).

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification 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).[9]

ORDER

The National Labor Relations Board orders that the Respondent Via 313 Pizza Restaurant II, LLC, Austin, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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

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

> INCLUDED: All full-time and regular part-time Cashiers, Hosts, Hostesses, Servers, Server Assistants, Bartenders, Cooks, Doughs, and Dishwashers.
>
> EXCLUDED: All General Managers, Assistant General Managers, Assistant Managers, Kitchen Managers, MIT Managers in Training, Training Managers, BOH Trainees, FOH Trainees, BOH Trainers, FOH Trainers, Corporate Trainers, Guards, and Supervisors as defined by the Act.[10]

(b) Within 14 days after service by the Region, post at its restaurant located at 3016 Guadalupe Street, Suite 100, Austin, Texas 78705, a copy of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the 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, 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 to all current employees and former employees employed by the Respondent at any time since July 11, 2025.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 16 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 23, 2026

James R. Murphy, Chairman

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[9] For the reasons stated in his dissent in *Longmont United Hospital*, 374 NLRB No. 52 (2026), in order to effectuate Sec. 10(c) of the Act, Member Prouty believes that additional remedies are required to remedy the harm caused by an employer's unlawful refusal to bargain with its employees' chosen union in a test of certification case. To address the damage created by the unlawful delay in initiating bargaining, Member Prouty would also order the Respondent to make the union and affected employees whole for any provable, reasonably quantifiable economic harm resulting from the unlawful refusal to bargain; provide the union on-site access to the bargaining unit; adhere to a bargaining schedule; post a notice of employee rights for a period of 1 year; and read and distribute a remedial notice to employees. See *Longmont*, supra, slip op. at 2-5; see also *CP Anchorage Hotel 2 d/b/a Hilton Anchorage*, 371 NLRB No. 151 (2022) (Member Prouty, concurring) (setting forth his view that notice reading and distribution should be standard for all unfair labor practices found by the Board), enfd. 98 F.4th 314 (D.C. Cir. 2024). Member Prouty believes that these remedies are necessary where, as here, employees have been deprived of the benefit of their chosen representative because of the Respondent's unlawful refusal to bargain.

[10] BOH Shift Managers and FOH Shift Managers are neither included in, nor excluded from, the bargaining unit.

[11] 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."

David M. Prouty, Member

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Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

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.

FEDERAL LAW 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 fail and refuse to recognize and bargain with Restaurant Workers United (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

> INCLUDED: All full-time and regular part-time Cashiers, Hosts, Hostesses, Servers, Server Assistants, Bartenders, Cooks, Doughs, and Dishwashers.
>
> EXCLUDED: All General Managers, Assistant General Managers, Assistant Managers, Kitchen Managers, MIT Managers in Training, Training Managers, BOH Trainees, FOH Trainees, BOH Trainers, FOH Trainers, Corporate Trainers, Guards, and Supervisors as defined by the Act.[12]

VIA 313 PIZZA RESTAURANT II, LLC

The Board's decision can be found at www.nlrb.gov/case/ 16-CA-370467 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.

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[12] BOH Shift Managers and FOH Shift Managers are neither included in, nor excluded from, the bargaining unit.