UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 05

MID-ATLANTIC DIVISION OF KROGER LIMITED PARTNERSHIP I

Employer

and

AN INDIVIDUAL

Petitioner

Case 05-RD-398286

and

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 400 A/W UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO

Union

DECISION AND ORDER DISMISSING PETITION AND WITHDRAWING NOTICE OF REPRESENTATION HEARING

On November 2, 2026, Petitioner filed a petition in this case seeking to decertify United Food and Commercial Workers, Local 400 a/w United Food and Commercial Workers International Union (UFCW), AFL-CIO (the Union) as the exclusive collective-bargaining representative of employees employed by Mid-Atlantic Division of Kroger Limited Partnership I (the Employer) working at the Employer's Chester, Virginia store currently located at 10800 Iron Bridge Road, Chester, Virginia, 23831 (Chester store).

An administrative investigation of the instant petition revealed the existence of a collective-bargaining agreement between the Union and the Employer which is effective from August 4, 2024 to August 7, 2027, and which covers employees in the Employer's stores operated in Eastern Virginia, including Chesterfield County, Virginia. The Chester store is located within Chesterfield County, Virginia. In addition, the investigation revealed the existence of an agreement between the Union and the Employer containing an after-acquired clause. An after-acquired clause is an agreement between a union and an employer that the employer will recognize the union at future employer locations upon proof of the union's majority status. *Houston Div. of the Kroger Co.*, 219 NLRB 388, 389 (1975). The evidence revealed that the after-acquired clause in this case applies to any newly built or acquired stores in the same Eastern Virginia geographic area covered by a collective-bargaining agreement between the Union and the Employer and provides that upon showing of majority support of employees at that store, the Employer will voluntarily recognize the Union as the exclusive collective-bargaining representative of those employees. Further

administrative investigation revealed that on June 3, 2026, a neutral third party determined that the Union had achieved majority support among employees at the Chester store. There is no dispute that the Employer voluntarily recognized the Union as the exclusive collective-bargaining representative of the employees at the Chester store.

On November 9, 2026, I issued a Notice to Show Cause and Order Indefinitely Postponing Hearing (Order to Show Cause). Therein, I noted that the instant petition was filed on November 2, 2026, which is within 6 months after the date on which majority support among employees at the Chester store was determined, and I directed the parties to show cause as to why the instant petition should not be dismissed under the Board's recognition bar. Petitioner subsequently filed a response to the Order to Show Cause, and the Union subsequently filed a response to Petitioner's response. The Employer did not file a response to the Order to Show Cause.

Lawful voluntary recognition of a union by an employer bars a petition for "a reasonable period of time." *Keller Plastics Eastern, Inc*., 157 NLRB 583 (1966); *Smith's Food & Drug Centers, Inc.*, 320 NLRB 844 (1996); *Seattle Mariners*, 335 NLRB 563 (2001). The Board's current policy is set forth in Section 103.21 of the Board's Rules and Regulations, which states that this "reasonable period" ranges from a minimum of 6 months after the parties' first bargaining session to 1 year after that date. 29 C.F.R. 103.21. Here, the instant petition was filed on November 2, 2026, which is within 6 months after June 3, 2026, the date on which it was determined that the Union had achieved majority support among employees at the Chester store, and the date on which the Employer's recognition of the Union is given bar quality. Petitioner, in its response to the Order to Show Cause, does not dispute the aforementioned facts, nor does Petitioner dispute that the Employer's recognition is given bar quality under extant Board law. Rather, Petitioner argues that the recognition bar is unlawful and should be disregarded and ultimately overruled, relying on the United States Supreme Court's decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), as well as on *Hospital Menonita de Guayama, Inc. v. NLRB*, 183 F.4th 745 (D.C. Cir. 2026), a case which dealt not with the recognition bar, but with the Board's successor bar. However, applying extant Board case law and the Board's Rules and Regulations, I find the recognition bar applies.

Accordingly, it is hereby

ORDERED that the petition in this matter is dismissed, and the Notice of Representation Hearing previously issued in this matter is withdrawn.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

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Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on December 8, 2026**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on December 8, 2026.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review

without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: November 23, 2026

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Regional Director
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