



**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**

**Region 31**

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www.nlr.gov

April 16, 2008

Matthew Silcox  
12337 Sixth Avenue  
Victorville, CA 92395

Re: Rite Aid Store #6473  
Case 31-RD-1584

Dear: Mr. Silcox:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered<sup>1/</sup>. As a result of the investigation, I find that further proceedings are unwarranted.

Although the description of the unit in Block 5 in the captioned Petition is not clear<sup>2/</sup>, an administrative investigation has determined that the Petitioner is requesting a unit of all employees employed at the Employer's Victorville, California Store No. 6473, excluding professional employees, guards and supervisors as defined in the Act. There are approximately 16 employees in the requested unit.

In 1998, the Employer, the Union named on the Petition herein (UFCW Local 1167), and United Food and Commercial Workers Locals 135, 324, 770, 1036, 1428 and 1442 entered into a Settlement Agreement wherein the parties agreed that upon presenting proof of majority status, the Employer would recognize the Local Union as the exclusive bargaining representative the first day of the first payroll period in the month following the date of receipt by the Employer of the proof of majority status. The Settlement Agreement also provides that recognition shall place the employees in the unit covered by the collective bargaining agreement between the Employer and all seven local Unions under the multi-location, multi-Union Retail Drug Agreement.

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<sup>1/</sup> The Petitioner filed an identical petition in Case 31-RD-1578 on January 22, 2008. On February 15, 2008, I dismissed the petition for the same reason herein. On March 7, 2008, the Employer filed a Request for Review of my Order Dismissing Petition. The Employer's Request for Review is currently pending before the Board.

<sup>2/</sup> The unit reads, "Included: All Employees in Store #6473, front end and pharmacy." There are no exclusions listed.

The most recent Retail Drug Agreement is effective from July 11, 2005 through July 13, 2008 and covers all of the Employer's approximately 400 stores within the geographic jurisdiction of the seven Local Unions in Southern California. There are approximately 5000 to 6000 employees in the unit covered by the Retail Drug Agreement.

On December 7, 2007, the Employer and UFCW Local 1167 entered into a Recognition Agreement for the petitioned-for employees at store No. 6473, Victorville, CA. The Recognition Agreement was effective the first payroll period in December, 2007 and established the appropriate unit as the unit of employees in the Retail Drug Agreement between the Employer and seven Local Unions. In view of the Settlement Agreement, the Retail Drug Agreement and the Recognition Agreement, it is clear that the employees at the Victorville store are part of the multi-location, multi-Union unit in the Retail Drug Agreement. Therefore, this Petition is being dismissed for two reasons:

First: The Petition was not timely filed. The Petition was filed on March 20, 2008. At the time the Petition was filed, the Retail Drug Agreement was in effect from July 11, 2005 through July 13, 2008, which is more than three years.<sup>3/</sup> Contracts having a duration longer than three years will not serve to bar an election past the three year period; however, all other contract bar rules apply. *General Cable Corp.*, 139 NLRB 1123 (1962). The "window period" for filing a decertification petition is calculated based on the third anniversary of the contract and not the expiration of the contract. *Union Carbide Corporation*, 190 NLRB 191 (1971). The "window period" calculation is based on the three-year anniversary, which is July 11, 2008. The 60 to 90 day window period for filing the instant petition is April 13, 2008 to May 12, 2008. Since the petition was filed March 20, 2008, it was premature and untimely.

Second: The petitioned-for unit is inappropriate. The general rule is that the bargaining unit in which a decertification election is to be held must be coextensive with the recognized or certified unit. *Mo's West*, 283 NLRB 130 (1987) and *Campbell Soup Co.*, 111 NLRB 234 (1955). At the time the Employer recognized UFCW Local 1167 for employees at the Victorville Store, those employees were merged into the multi-location, multi-Union Retail Drug Agreement. Inasmuch as the Retail Drug Agreement encompasses approximately 400 stores consisting of 5000 to 6000 unit employees, the petitioned-for 16 employees located at the Victorville Store do not constitute an appropriate unit. *S.B. Rest of Framingham*, 221 NLRB 506 (1975).

Accordingly, I am dismissing the petition in this matter.

Pursuant to the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570. A copy of the request for review must be served on the Regional Director and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington, DC by close of business **April 30, 2008** at 5 p.m. (ET). You should be advised that Section 102.114 of the Board's Rules and Regulations

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<sup>3/</sup> The front cover of the agreement shows the term as "July 11, 2005 – July 13, 2008." Article 17 – Expiration and Renewal, on page 39 of the agreement states, in pertinent part, "This Agreement shall be in effect from July 11, 2005, to and including July 13, 2008. . ." Although the contract was executed on March 15, 2006, there is nothing in the agreement establishing that the term of the agreement is anything other than July 11, 2005 through July 13, 2008. It is this contract term that an employee must rely on in order to determine when a decertification petition can be filed. See, *South Mountain Healthcare*, 344 NLRB No. 40 (2005) and *Cooper Tire Co.*, 181 NLRB 509 (1970).

precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file.

A request for review may also be submitted by electronic filing. See the attachment provided in the initial correspondence in this case or refer to OM05-30 and OM 07-07, which are available on the Agency's website at [www.nlr.gov](http://www.nlr.gov) for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website. 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, either by mail or by electronic filing. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, DC, and a copy of any such request for extension of time should be submitted to the Regional Director and to each of the other parties to the proceeding. The request for review and any extension of time for filing must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding, and a copy must be served in the same or faster manner as that utilized in filing the request with the Board. When filing with the Board is accomplished by personal service, however, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

The request for review and any request for extension of time must include a statement that a copy has been served on this office and on each of the other parties to this proceeding in the same or faster manner as that utilized in filing the request with the Board.

Very truly yours,

*/s/ James J. McDermott*

James J. McDermott,  
Regional Director

cc: Office of the Executive Secretary, National Labor Relations Board, 1099 14<sup>th</sup> Street,  
N.W., Washington, D.C. 20570

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