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March 10, 2014

Mr. Gary Shinnars
Executive Secretary
National Labor Relations Board
1099 14th Street, NW, Suite 11600
Washington, DC 20570

Re: Request to Speak at Public Meeting RIN 3142-AA08

Dear Mr. Shinnars:

On behalf of the National Grocers Association (“NGA”), I submit this Request to Speak at the Board’s Public Meeting in the matter of the Representation-Case Procedures Rulemaking, RIN 3142-AA08.

NGA is the national trade association representing retail and wholesale grocers that comprise the independent sector of the food distribution industry. An independent retailer is a privately owned or controlled food retail company operating in a variety of formats. Independents are the true “entrepreneurs” of the grocery industry and dedicated to their customers, associates, and communities. Much of NGA’s membership is comprised of family-owned and family-operated small businesses. Nearly half of NGA’s members are single-store operators, and another quarter operate less than five stores. Independent retail and wholesale grocers are an important part of America’s economy. According to the NGA Economic Impact Study, independent grocers are responsible for over 1.5 million U.S. jobs, and independent retail and wholesale grocers and their employees generate almost \$14 billion in state and local taxes and over \$27 billion in federal taxes. Nearly \$130 billion in sales are generated through our industry.

The Issues that NGA wishes to speak on include B2, B3, C3 and E3, as set forth in more detail below.

First Issue: E3

NGA opposes any reduction in the scheduling of the election because hasty decisions don’t make good decisions. Free speech is the cornerstone of the Act’s statutory protections, and

the NPRM eviscerates an employee's opportunity to become fully informed. Instead of deliberately evaluating all relevant information, employees will be rushed into voting without a full opportunity to receive facts, contemplate the consequence of their decision, and make an informed choice whether to be represented by a union. By the filing of a petition, a union has had ample time to have convinced 30% of the proposed unit to sign cards; how can the other 70% be expected to make an informed decision in a few days? Employees faced with making such an important workplace decision should be able to do so in an environment conducive to reflection and thought, not one that sacrifices deliberation for speed. The NPRM forces employees to act in haste and repent at leisure. There is no legitimate analysis supporting a need to hasten the time before an election and certainly nothing supported by empirical evidence from the Board, especially when its own data confirms that the median time between a petition and election was 38 days. Forcing employers into a "fire drill" also tramples free speech. Many NGA members are without large management or HR teams and would require time to educate themselves about their legal rights before responding to any organizing campaign. Accordingly, the Board should reject any change to the election timing.

Second Issue: C3

NGA is concerned about the NPRM's proposal of compulsory disclosure on voter lists to include personal and confidential e-mail accounts and phone numbers. This non-consensual disclosure constitutes a gross invasion of employees' privacy. Many NGA members are small businesses and do not collect this private information of their employees. To require employers to collect that information after the direction of an election and share it with third parties without any safeguards on how that information is handled would be unduly burdensome and intrude on employees' privacy rights. At a minimum, employees must be allowed to opt-in to share private information with outsiders. Only with their specific consent can the Board not place at risk the privacy interests of workers.

Even more disconcerting to employees' privacy interests is how the information could be used. It is not inconceivable that individual organizers could abuse this information, causing irreparable harm to employees. As security breaches become widespread with identity theft as the fastest growing white collar crime, companies must be ever vigilant in protecting their employee's personal information. There are no safeguards contemplated by the NPRM to protect against unforeseen abuses with this private information. Identity theft, harassment or other abuse of personal information can happen without the union's knowledge, and there is no mechanism for the Board or anyone else to effectively sanction individuals against misuse. Disclosing private email and phone numbers to labor unions within 2 days after direction of an election does not further the Act's statutory purposes.

Third Issue: B3

There are due process problems contemplated by the NPRM's changes to the litigated issues during the pre-election hearing. The heart of a representation petition is whether there is a question concerning representation. The Board must determine if 30% of the unit has made a showing of interest, and the Board cannot fulfill this statutory function without knowing the unit's composition. To direct an election when disputes exist over voter eligibility of less than 20 percent of the unit would create vast uncertainty and confusion. Ultimately, an election would occur that conceivably could include supervisors, who are statutorily excluded. If the individuals in dispute did not reach the 20 percent threshold, and the union won, the result would find supervisors represented by a labor union. How can employees make an informed decision about representation when they are confused about who else will be in the unit? The prejudice created by postponing voter eligibility challenges until post-election is akin to a litigant not being able to disqualify a juror until after the verdict is rendered. The NPRM fails to consider the potential impact that the Board's ruling in *Specialty Healthcare* will have on determining who should be included or excluded from a petitioned-for unit, and creates more questions than answers for employers and confusion during the election process as to who is eligible to vote. NGA urges the Board to reject the "20% rule" because it violates the Board's clear statutory duty to determine with precision the composition of a bargaining unit.

Fourth Issue: B2

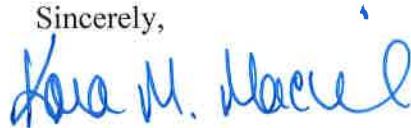
NGA opposes any revision to the pre-election hearing that limits a party from raising issues until after the pre-election hearing. One of the main changes contemplated by the Board would require the parties to raise every possible argument at the initial election hearing, or risk waiving those arguments. Accordingly, within days of the union filing a petition, the employer must get a handle on the organizing drive, including who is being proposed to be included in the unit (and whether such a unit is proper) and make an informed decision as to what issues to raise at the hearing, just a few days later.

As small business owners, NGA members are not armed with legal staff and it would necessarily take time to locate, retain and consult appropriate labor counsel on the significant business and operational issues posed by the union's petition. By requiring employers to put everything in a statement of position at a pre-election hearing or be subject to a waiver increases the adversarial nature of the proceeding and makes it even less likely that the parties will resolve disputes early in the process. Fearing that they may waive issues not set forth in writing, employers may be less inclined to enter into stipulated or consented to elections. Accordingly, employers should be able to supplement or amend their statement of position as facts and the election process develops.

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In light of the significant concerns of NGA members and how the NPRM would impact small business owners across the country, NGA respectfully requests the opportunity to speak before the Board on the proposed representation rules.

Sincerely,



Kara M. Maciel

cc: Tom Wenning, General Counsel, National Grocers Association
Greg Ferrara, Vice President Public Affairs, National Grocers Association