

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: October 30, 2006

TO : Joseph Barker, Regional Director
Region 13

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Jani-King Of Illinois
Case 13-CA-43538 530-4825-6700

The Region submitted this successorship case for advice as to whether the Employer employed a "substantial and representative complement" of employees on the date that the Union requested recognition, at which time the majority of the workforce consisted of Union-represented predecessor employees.

We agree with the Region that the Employer employed a substantial and representative complement when the Union made its demand for recognition on July 27, 2006. The Employer had taken over custodial operations from the predecessor without any change in operations or hiatus and, by July 27, was fully operating with nearly 60% of its eventual employee complement in 100% of the job classifications.¹ Moreover, the Employer failed to demonstrate that it had a concrete plan to substantially expand its workforce within a predictable period of time. Indeed, there is no evidence that the Employer had any intention of employing more custodians during the school year than over the summer, the Employer's bid proposal and contract did not contemplate any such change, and there was no historical practice consistent with such an arrangement.²

¹ See Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 47 (1987) (if new employer begins operations uninterrupted, substantial representative complement determination should take place on the date of the transfer); Shares, Inc., 343 NLRB No. 59 (2004), slip op. at 1 n.2, citing Yellowstone International Mailing, 332 NLRB 386 (2000) (in general, an existing complement is considered "substantial and representative" when approximately 30 percent of the eventual employee complement is employed in 50 percent of the job classifications).

² See Foodbasket Partners, 344 NLRB No. 96, slip op. at 6 (2005), citing to Delta Carbonate, 307 NLRB 118, 118-19 (1992), enfd. 989 F.2d 486 (3d Cir.1993) (no reason to delay substantial and representative complement determination where future employment needs, contingent on

Since it is undisputed that on July 27, the date that the Union requested recognition, the Employer employed a majority of the predecessor employees, we conclude that the Employer was a Burns³ successor and its failure to recognize and bargain with the Union violated Section 8(a)(5) of the Act. Accordingly, complaint should issue, absent settlement.

B.J.K.

"indeterminable" future sales, provided no reasonable certainty that work force would expand). See also Burke-Parsons Bowlby, 288 NLRB 956, 964 (1988), enfd. 905 F.2d 803 (4th Cir. 1990), cert. denied 498 U.S. 1016 (no delay in making determination was warranted, even where the successor created a new shift and hired additional employees within two months, because expansion plans had been "highly uncertain").

³ NLRB v. Burns International Security Services, Inc., 406 U.S. 272 (1972).