

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CONTEMPORARY CARS, INC.  
d/b/a MERCEDES-BENZ OF ORLANDO  
and AUTONATION, INC.  
SINGLE AND JOINT EMPLOYERS

AND

CASES 12-CA-026126  
12-CA-026233  
12-CA-026306  
12-CA-026354  
12-CA-026386  
12-CA-026552

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO

**ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION  
FOR RECONSIDERATION OF THE BOARD'S DECISION AND ORDER**

On October 17, 2012, Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando (Respondent MBO) and AutoNation, Inc., (Respondent AutoNation), herein collectively called Respondents, pursuant to Section 102.48(d) of the Board's Rules and Regulations, as amended, filed a Motion for Reconsideration of the Board's Decision and Order, reported at 358 NLRB No. 163, dated September 28, 2012. Counsel for the Acting General Counsel opposes Respondents' Motion for Reconsideration of the Board's Decision and Order.

**I. There are no extraordinary circumstances warranting reconsideration of the Board's Decision and Order and Respondents' Motion should be dismissed in its entirety.**

Section 102.48(d) (1) of the Board's Rules and Regulations requires that a motion for reconsideration of a Board decision or order to be based on "extraordinary circumstances." No such circumstances exist in this case, and therefore the Motion should be denied in its entirety. Respondents' arguments in Points II through V of its Motion were fully litigated and briefed in the underlying proceeding before the Board, as set forth in detail in the below procedural history of this matter. The only argument that Respondents are raising for the first time is their

contention in Point VI of the Motion that the recess appointments of Members Block and Griffin were invalid, and therefore the Board did not have legal authority to issue the aforementioned Decision and Order.

For the reasons set forth below, even if the Board reconsiders its Decision and Order, the Motion should be denied in its entirety.

Section II of this opposition sets forth the procedural history of the representation and test of certification cases related to the instant cases. Section III sets forth Counsel for the Acting General Counsel's argument that even if the Board reconsiders its Decision and Order, Respondents' Motion is without merit and the motion should be denied in its entirety. Section IV is the conclusion of this opposition.

## **II. Procedural History**

### **A. The related representation case**

On October 3, 2008, the International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) filed the petition in Case 12-RC-009344 seeking to represent a unit of service technicians (automobile mechanics) employed by Respondent MBO. (GC Ex 58).<sup>1</sup> The Regional Director for Region 12 issued a Decision and Direction of Election on November 14, 2008, directing an election in the unit sought. (GC Ex 59). On December 15, 2008, the two-member Board denied Respondent MBO's request for review of the Regional Director's Decision and Direction of Election. An election was held on December 16, 2008. The tally of ballots issued at the conclusion of the election showed that there were 16 votes for the Union, 14 votes against the Union, and three determinative challenged ballots. (GC Ex 62).<sup>2</sup>

On January 15, 2009, the Regional Director issued a Supplemental Decision on Challenged Ballots, directing that the three challenged ballots be opened and counted. (GC Ex

---

<sup>1</sup> As used herein, the numbers following "Tr." refer to the transcript page numbers. In addition "GC Ex." refers to General Counsel's exhibits, "J Ex." refers to Joint exhibits, "R Ex." refers to Respondent's exhibits, and "R. Br." refers to Respondents' Brief in Support of Exceptions.

<sup>2</sup> No objections to the election were filed.

63). The Regional Director noted as follows: the pending unfair labor practice charge in Case 12-CA-026126 alleged that the three challenged voters had been unlawfully discharged by Respondent before the election; Respondent MBO contended that they were not eligible voters because their employment was terminated in order to cut costs and they had no reasonable expectancy of recall; and the Union contended that they were eligible to vote because their employment was unlawfully terminated. The Regional Director reasoned that: in view of the Union's two vote lead in the count as of that time, unless at least two challenged voters had cast ballots against the Union, the Union would have received a majority of the votes cast and would be entitled to be certified; and if at least two challenged voters cast ballots against the Union, the outcome of the election would still depend on the alleged unlawful terminations of employment of the challenged voters in Case 12-CA-026126, because that would determine the eligibility of the challenged voters. The Regional Director noted that the three challenged voters had submitted waivers of the secrecy of their ballots and desired to have their ballots opened and counted, and decided that in these circumstances the challenged ballots should be opened and counted without waiting for the outcome of the pending charge alleging the unlawful termination of their employment, citing *Garrity Oil Company, Inc.*, 272 NLRB 158 (1984); *Premium Fine Coal, Inc.*, 262 NLRB 428 (1982); and *International Ladies' Garment Workers Union*, 137 NLRB 1681 (1962). Respondent MBO did not request review of the supplemental decision. The challenged ballots were opened and counted by the Regional office on February 10, 2009, in the presence of representatives of Respondent MBO and the Union. All three challenged voters cast ballots in favor of the Union, thus establishing that a majority of the valid votes cast were in favor of the Union whether or not any or all of the three challenged voters were ultimately determined to be eligible to vote. The Regional Director then certified the Union as the unit employees' collective bargaining representative on February 11, 2009. (GC Ex 64).

## **B. The related test of certification case**

Thereafter, Respondents failed and refused to recognize and bargain with the Union as the representative of the unit employees in order to contest the certification. On June 25, 2009, the Regional Director for Region 12 issued a Complaint in Case 12-CA-026377 (the test of certification case) alleging that Respondent MBO's conduct violated Section 8(a)(5) and (1) of the Act. Pursuant to a Motion for Summary Judgment filed by the General Counsel in Case 12-CA-026377, on August 28, 2009, the two-member Board issued a Decision and Order, reported at 354 NLRB No. 72, directing Respondent MBO to recognize and bargain with the Union. Respondent MBO appealed the Board's Decision and Order to the United States Court of Appeals for the District of Columbia Circuit.

On June 18, 2010, the United States Supreme Court issued the decision in *New Process Steel, L.P. v. NLRB*, 564 U.S. 840 (2010), holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. In view of the *New Process Steel* decision, the Board then issued an order setting aside the two-member Board's decision and order in the test of certification case reported at 354 NLRB No. 72, and retaining the case on its docket for further appropriate action.

On August 23, 2010, the properly constituted Board issued a new Decision and Order, reported at 355 NLRB 592 (2010), referred to by Respondents as *Mercedes-Benz of Orlando I*. In that decision, after considering the pre-election representation issues raised by Respondents, the Board affirmed the decision to deny Respondent MBO's request for review in the representation proceeding. The Board further found that the timing of the representation election (on December 16, 2008) was not affected by the two-member Board's decision on the request for review, and the decision of the Regional Director to open and count the ballots was, at worst, harmless error that did not affect the tally of ballots. Thus, the Board determined that the election was properly held and the tally of ballots was a reliable expression of the employees' free choice. The Board found that the Regional Director's certification of representative based

on the election was valid, but deemed the certification to have issued as of August 23, 2010, instead of February 11, 2009, for the purpose of future proceedings. In addition, the Board found that Respondent MBO violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the Union, and reconfirming the certification of the Union in these cases. The Board granted the General Counsel's motion for summary judgment in the test of certification case, and to the extent consistent with its Decision and Order of that date, adopted the findings of fact, conclusions of law, remedy and order reported at 354 NLRB No. 72. [GC Ex 4(a) and 4(b)].

On January 27, 2012, the United States Court of Appeals for the District of Columbia Circuit enforced the Board Decision and Order in *Mercedes-Benz of Orlando I. NLRB v. Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando*, 667 F.3d 1364 (11<sup>th</sup> Cir. 2012).

**III. Even if the Board reconsiders its Decision and Order pursuant to Respondents' Motion, the Motion is without merit and should be denied in its entirety.**

**A. The Board has already determined that Respondents had a duty to bargain with the Union since the date of the representation election.**

Respondents now argue that the two-member Board did not have authority to deny its request for review of the Decision and Direction of Election in the representation case and that the Board should have declined to act on the request for review until there was a properly constituted Board. Respondents argue that if the Board had not acted on its request for review, the ballots would have been impounded following the election, and would have remained impounded until August 23, 2010, pursuant to Rule 102.67(b) of the Board's Rules and Regulations. Thus, Respondents' argument continues, their bargaining obligation could not have arisen until August 23, 2010, the date they contend the ballots should have been opened and counted.

However, the Board has already considered and rejected Respondents' argument that they were not obligated to bargain with the Union before August 23, 2010. On June 18, 2010, Respondents filed a Motion for Partial Summary Judgment with the Board seeking the dismissal

of the portion of the complaint herein alleging that Respondents violated Section 8(a)(5) of the Act. In that motion, Respondents argued that the ruling in *New Process Steel* “nullified” the two-member Board’s denial of Respondents’ request for review in the representation case, and by implication rendered that decision a “nullity.” (GC Ex. 000). Respondents asserted that the bargaining obligation was “obliterated,” and contended that there was no bargaining obligation “retroactive to the representation election.” (GC Ex. 000). Respondents requested that the Board grant partial summary judgment with regard to the allegations that they violated Section 8(a)(1) and (5) of the Act by laying off employees and implementing unilateral changes without bargaining with the Union, as was subsequently found by the Board in this matter. On June 25, 2010, the General Counsel filed an opposition to Respondents’ motion with the Board.

On August 27, 2010, the Board issued an Order denying Respondents’ Motion for Partial Summary Judgment. (GC Ex. sss). In its August 27, 2010 Order, the Board noted that, in its August 23, 2010 Decision and Order in Case 12-CA-026377, reported at 355 NLRB 592 (2010), it had found that “the election was properly held, the tally of ballots is a reliable expression of the employees’ free choice, and the Regional Director’s certification of representation based thereon was valid.” (GC Ex. sss). The Board found that Respondents failed to establish that they were entitled to a judgment as a matter of law. (GC Ex. sss). In denying Respondents’ motion, the Board effectively concluded that Respondents’ bargaining obligation attached at the time of the election, rather than on August 23, 2010, the effective date of this certification of representative. Thus, the Board would have granted Respondents’ motion if there had been no bargaining obligation as a matter of law.

On September 15, 2010, Respondents moved for reconsideration of the Board’s August 27, 2010, denial of their Motion for Partial Summary Judgment. On September 20, 2010, the General Counsel filed an opposition. On November 23, 2010, the Board denied Respondents’ motion for reconsideration, inasmuch as Respondents had not demonstrated extraordinary

circumstances warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations. (GC Ex 7).

As Respondent acknowledges in its Motion, at pages 31 to 46 of its brief in support of exceptions to Administrative Law Judge George Carson II's March 18, 2011, decision in the instant case, and at pages 5 to 10 of its Reply Brief, Respondents raised all of the arguments they now raise in Points II through V of the instant Motion for Reconsideration, which are predicated on the same argument that Respondents made in their June 18, 2010, Motion for Partial Summary Judgment. The undersigned Counsel for the Acting General Counsel addressed these issues at pages 25 to 35 of the answering brief to Respondent's exceptions. Thus, these arguments were before the Board when it made the decision Respondents are now asking it to reconsider.

**B. The Board correctly decided that Respondents' bargaining obligation attached at the time of the election.**

Even if the Board decides to revisit Respondents' arguments, the facts and Board law demonstrate that the ALJ and the Board reached the proper conclusion that Respondents' bargaining obligation attached at the time of the election in this case, notwithstanding that if the two-member Board had not denied Respondent MBO's request for review of the Regional Director's Decision and Direction of Election, the ballots would have been impounded, rather than counted, on December 16, 2008. As the ALJ found, notwithstanding Respondent's argument that the facts of this case are unique, the facts in *Mike O'Connor Chevrolet*, 209 NLRB 701, 704 (1974) and similar cases where there is a delay between a representation election and certification of a union are analogous and the ruling in *Mike O'Connor Chevrolet* is applicable. *Mercedes-Benz of Orlando II*, 358 NLRB No. 163, slip op. at p.22.

The ALJ properly noted that if the Board had intended its August 23, 2010 Decision and Order in *Mercedes-Benz of Orlando I* to signify that there was no bargaining obligation prior to August 23, 2010, it would have expressly done so, rather than stating that August 23, 2010

would be the certification date for purposes of future proceedings. As the ALJ also pointed out, in January 2009, Respondents' supervisor Alex Aviles told technician Brad Meyer, "because of the pending union negotiations and the status quo...we won't be performing the skill level reviews...the skill level review is tied into your pay." Thus, Respondents knew they had a duty to bargain based on the tally of ballots issued on December 16, 2008. 358 NLRB No. 163, slip op. at p.22-23. (Tr. 379-380, 1410). The Board's Decision and Order demonstrates that the Board applied *Mike O'Connor Chevrolet*, 209 NLRB 701 (1974) to this case. 358 NLRB No. 163, slip op. at fn.4.

In fact, the ballots were opened and counted on December 16, 2008. Respondent knew the likely election result then, and knew the result with certainty on February 10, 2009. Even assuming for the sake of argument that the ballots in this case were impounded rather than opened and counted, this case would be similar to a situation where determinative challenged ballots are sealed until resolved.

In its decision in *Han-Dee Pak, Inc.*, the Board cited *Mike O'Connor Chevrolet* and concluded that because the employer had not established that there were compelling economic circumstances, it acted at its peril in making unilateral changes after the election, but before the determinative challenged ballots were resolved. 249 NLRB 725 (1980) and 253 NLRB 898 (1980). To hold otherwise would allow Respondents, who knew that the Union won the election, to undermine the Union's majority status and allow Respondents to cause the harm that the Board was trying to prevent in *Mike O'Connor Chevrolet* by "box[ing] the union in on future bargaining positions by implementing changes of policy and practice..." 209 NLRB 701, 703 (1974).

**C. Respondents' bargaining obligation was not excused by compelling economic considerations. Respondents violated Section 8(a)(1) and (5) of the Act by unilaterally laying off technicians Cazorla, Persaud, Poppo and Puzon.**

Respondents argue that they need only establish that the employees were laid off in response to "compelling economic circumstances," and that compelling economic

circumstances justified its layoffs of technicians in early April 2009 and its other unilateral actions. Respondents further contend that “compelling economic circumstances,” discussed in *Mike O’Connor Chevrolet*, is a lesser standard than that used by the Board when unilateral changes occur during ongoing collective-bargaining negotiations. The Board has held that during negotiations for a collective-bargaining agreement an employer may not implement unilateral changes absent an overall impasse, even if it gives the union notice and an opportunity to bargain over a particular change prior to implementation, unless the employer faces an economic exigency. See *RBE Electronics*, 320 NLRB 80, 81 (1995), citing *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991). Respondents contend that its actions were lawful because there were “compelling economic circumstances” for the layoffs, but failed to explain the difference between the standards. However, as explained below, the Board has consistently used basically the same standard in considering an employer’s right to make post-election and/or post-certification, pre-bargaining unilateral changes as it has in assessing an employer’s right to make such changes during bargaining, whether the standard is stated as requiring “compelling economic circumstances,” “compelling economic considerations” or an “economic exigency.”

Respondents laid off technicians Cazorla, Poppo, Persaud and Puzon in early April 2009, claiming that they selected the four lowest rated service technicians. 358 NLRB No. 163, slip op. at p.18-20, 22. (Tr. 451-453, 501-503, 594, 850-851, 870). General manager Berryhill asserted that the intent of the layoffs was not to save money, but to save the remaining technicians’ jobs by increasing their workloads, and to avoid the possibility that the better technicians would quit. (Tr. 1580-1581). Respondents admit that they did not notify or bargain with the Union about the layoffs. [Tr. 318-320; GC Exs. 1(dddd), 1(eeee)].

An employer violates Section 8(a)(1) and (5) of the Act by unilaterally changing the wages, hours, and other terms and conditions of employment of represented employees, which are mandatory subjects of bargaining, without first providing their bargaining representative with

notice and a meaningful opportunity to bargain about the change. *NLRB v. Katz*, 369 U.S. 736 (1962). Mandatory subjects of bargaining include layoff decisions. The decision to lay off employees for economic reasons is a mandatory subject of bargaining. *Holmes & Narver*, 309 NLRB 146, 147 (1992). Absent a showing that bargaining was excused and its unilateral change was privileged, an employer must provide notice to and bargain with the union representing its employees concerning both the layoff decision and the effects of that decision. *Caterpillar, Inc.*, 355 NLRB No. 91 (2010), citing *Pan American Grain Co.*, 351 NLRB 1412 (2007); *Tri-Tech Services*, 340 NLRB 894, 895 (2003). The burden is on the employer to establish such a showing.

The ALJ and the Board have already rejected Respondents' argument that their failure to notify and bargain with the Union prior to the April 2009 layoffs was excused by "compelling circumstances." 358 NLRB No. 163, slip op. at p.1, fn.4 and p.18-20. Respondents argue that because they were not engaged in negotiations with the Union at the time of the layoffs, they were not required to establish that the layoffs were necessitated by an economic exigency.

Respondents also argue that the ALJ erred when he relied on *Angelica Healthcare Services Group*, 284 NLRB 844 (1987) to find the economic exigency must be unforeseen, because in *Angelica* the Board relied on *Van Dorn Plastic Machinery Co.*, 265 NLRB 864 (1982), which was remanded by the Sixth Circuit and later reconsidered by the Board in *Van Dorn Plastic Machinery Co. (Van Dorn II)*, 286 NLRB 1233 (1987).

However, *Angelica* has been cited with approval by the Board in *Hankins Lumber*, 316 NLRB 837, 838 (1995), *RBE Electronics*, 320 NLRB 80, 81 (1995), and numerous other cases. In *Hankins Lumber*, 316 NLRB 837 (1995), the Board found that the employer violated Section 8(a)(1) and (5) of the Act by refusing to bargain with the newly certified union before bargaining began, because the employer failed to prove that bargaining over the layoffs was excused by "compelling economic considerations," the same as the "compelling economic circumstances" standard articulated by the Board in *Mike O'Connor Chevrolet*. 316 NLRB at 838. The Board

explained that compelling economic considerations are defined “as only those extraordinary events which are ‘an unforeseen occurrence, having a major economic effect [requiring] the company to take immediate action.’” *Id.* Compelling economic circumstances excusing bargaining can only be present when an employer faces an “extraordinary event.” *Alpha Associates*, 344 NLRB 782, 785-786 (2005), *enfd.* 195 Fed. Appx. 138 (4<sup>th</sup> Cir. 2006); *Holmes & Narver*, 309 NLRB 146, 147 (1992); *Angelica Healthcare Services*, *supra*.

Furthermore, contrary to Respondents’ assertion, the ALJ properly relied on *Uniserv*, 351 NLRB 1361, 1369 (2007), to conclude that a drop in business is not a compelling economic circumstance excusing Respondents’ bargaining obligation. It is clear that “compelling economic circumstances” and economic exigencies are defined the same by the Board, that the standard articulated in *Uniserv* is the standard applied by the Board to cases such as this, and that a drop in business is not a compelling economic circumstance.

Based on the facts found by the ALJ and adopted by the Board, there is no merit to Respondents’ contention that compelling or extraordinary circumstances justified their unilateral actions. 358 NLRB No. 163, slip op. at p.18-20, 22. At the latest, by late June 2008, 10 months before the layoffs, Respondent AutoNation had directed its dealerships, including Respondent MBO, to cut back on staff. (GC Ex. 96-105). Eight months later, in February 2009, service director Bullock informed the team leaders that they should identify technicians for possible layoff. (Tr. 1342-1343). Another month later, in March 2009, Respondents developed a plan for assessing and determining which technicians to layoff. (Tr. 1344-1347). Finally, in April 2009, Respondents laid off technicians Cazorla, Puzon, Persaud and Poppo. (Tr. 1376-1377). Respondent MBO’s profits dropped significantly in 2008, and began to stabilize in 2009. Thus, the need for possible layoffs was not unforeseen, and time was not of the essence. Moreover, even after directing team leaders to select technicians for layoff in February 2009, by which time Respondents knew the election results with certainty, Respondents did not act for another two months, which would have been ample time to give the Union notice and an opportunity to

bargain. It is apparent from Respondents' conduct that immediate action in the form of layoffs was not required to improve their financial situation. As correctly found by the ALJ, the layoffs and the economic circumstances leading to the layoffs were not unforeseen.

Moreover, as noted above, Respondent MBO general manager Berryhill admitted that Respondents did not save a significant amount of money by laying off the four technicians. (Tr. 1581). There is no evidence that any technician who was rated higher than those who were laid off expressed any desire to quit because of lack of work. Thus, the ALJ and Board properly found that Respondents failed to establish a compelling economic circumstance excusing them from bargaining with the Union, and that Respondents violated Section 8(a)(1) and (5) of the Act by unilaterally laying off Cazorla, Persaud, Poppo and Puzon.

**D. The ALJ properly ordered that technicians Cazorla, Persaud, Poppo and Puzon be reinstated with backpay.**

Respondents, relying on *Sundstrand Heat Transfer, Inc. v. NLRB*, 538 F.2d 1257 (7<sup>th</sup> Cir. 1976), argue that the ALJ inappropriately awarded backpay as part of the remedy. Respondents' argument is without merit. In *Bob Townsend/Colerain Ford*, 351 NLRB 1079 (2007), the Board determined that the employer violated Section 8(a)(5) of the Act by laying off employees for non-discriminatory economic reasons. Having found that the employer violated the Act by unilaterally laying off employees for economic reasons, the Board concluded that the appropriate remedy included reinstatement and backpay. See *Id.* at 1082; See also *Uniserv*, 351 NLRB 1361 (2007); *Alpha Associates*, 344 NLRB 782, 787 (2005), *enfd.* 195 Fed. Appx. 138 (4<sup>th</sup> Cir. 2006); *Winchell Co.*, 315 NLRB 526 fn.2 (1994), *enfd.* 74 F.3d 1227 (3<sup>rd</sup> Cir. 1995); *Westinghouse Electric Corp.*, 313 NLRB 452, 453 (1993). Thus, the award of backpay and reinstatement are the Board's standard remedies in cases where an employer violates Section 8(a)(5) of the Act by unilaterally laying off employees. The Board's Decision and Order requiring that Cazorla, Persaud, Poppo, and Puzon be reinstated and made whole should be affirmed and Respondents' contentions to the contrary should be denied.

**E. The Board’s recess appointments were valid and the Board had full legal authority to act at the time it rendered the instant Decision.**

As Respondents have acknowledged, in similar cases, the Board has found that it is not appropriate for it to decide whether Presidential appointments are valid. Instead, the Board applies the well-settled “presumption of regularity support[ing] the official acts of public officers in the absence of clear evidence to the contrary.” *Lutheran Home at Moorestown*, 334 NLRB 340, 341 (2001), citing *U.S. v. Chemical Foundation*, 272 U.S. 1, 14-15 (1926); *Center for Social Change*, 358 NLRB No. 24 (2012).

**IV. Conclusion**

Respondents have raised no argument that would warrant the Board reconsidering its Decision and Order. Even if the Board were to reconsider, it should reject each of Respondents’ arguments for the reasons stated herein. Counsel for the Acting General Counsel respectfully requests that the Board deny Respondents’ motion for reconsideration in its entirety.

**DATED** at Tampa, Florida this 13<sup>th</sup> day of November, 2012.

Respectfully submitted,

/s/ Rafael Aybar  
Rafael Aybar  
Counsel for the Acting General Counsel  
National Labor Relations Board – Region 12  
Fifth Third Center  
201 East Kennedy Blvd., Suite 530  
Tampa, Florida 33602-5824

**CERTIFICATE OF SERVICE**

I hereby certify that the **ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR RECONSIDERATION OF THE BOARD'S DECISION AND ORDER** in Cases 12-CA-026126, 12-CA-026233, 12-CA-026306, 12-CA-026354, 12-CA-026386 and 12-CA-026552 was electronically filed on the 13<sup>th</sup> day of November 2012.

By electronic filing at [www.nlrb.gov](http://www.nlrb.gov) to:

Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board – Room 11602  
1099 Fourteenth Street, N.W.  
Washington, D.C. 20570-0001

By electronic mail to:

Steven M. Bernstein, Esq.  
Fisher & Phillips, LLP  
2300 Sun Trust Financial Centre  
401 E. Jackson Street  
Tampa, Florida 33602  
E-mail: [sbernstein@laborlawyers.com](mailto:sbernstein@laborlawyers.com)

Douglas R. Sullenberger, Esq.  
Fisher & Phillips, LLP  
1500 Resurgens Plaza  
945 E. Paces Ferry Road  
Atlanta, Georgia 30326  
E-mail: [dsullenberger@laborlawyers.com](mailto:dsullenberger@laborlawyers.com)

David M. Gobeo, Esq.  
Fisher & Phillips, LLP  
450 E. Las Olas Blvd.  
Ft. Lauderdale, Florida 33301  
E-mail: [dgobeo@laborlawyers.com](mailto:dgobeo@laborlawyers.com)

Christopher T. Corson, General Counsel  
Attn: William Haller, Esq.  
International Association of Machinists  
and Aerospace Workers, AFL-CIO  
9000 Machinists Place  
Upper Marlboro, MD 20772-2687  
E-mail: [whaller@iamaw.org](mailto:whaller@iamaw.org)

David A. Rosenfeld, Esq.  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-1091  
E-mail: [drosenfeld@unioncounsel.net](mailto:drosenfeld@unioncounsel.net)

David Porter  
International Association of Machinists  
and Aerospace Workers, AFL-CIO  
1111 W. Mockingbird Lane, Suite 1357  
Dallas, Texas 75347  
E-mail: [dporter@iamaw.org](mailto:dporter@iamaw.org)

Respectfully submitted,

/s/ Rafael Aybar  
Rafael Aybar  
Counsel for the Acting General Counsel  
National Labor Relations Board – Region 12  
Fifth Third Center  
201 East Kennedy Blvd., Suite 530  
Tampa, Florida 33602-5824