

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

CORBEL INSTALLATIONS, INC.

and

**COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO**

Case No. 29-CA-90466

and

**LOCAL 1430, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S LIMITED EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

On May 15, 2013, Administrative Law Judge Mindy E. Landow issued a Decision and Recommended Order in Case No. 29-CA-90466 with respect to a Complaint issued against Respondent Corbel Installations, Inc. Judge Landow found that Respondent violated Section 8(a)(1), (2), (3) and (5) of the National Labor Relations Act.

Counsel for the Acting General Counsel respectfully urges the National Labor Relations Board to adopt those findings of facts and conclusions of law of the Administrative Law Judge to which the Acting General Counsel takes no exception.

Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, Counsel for the Acting General Counsel respectfully takes limited

exceptions regarding the remedy provided for in the Decision of the Administrative Law Judge, as set forth below.¹

The Judge erred by failing to provide as a remedy an extension of the certification period, in accordance with *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

After Communications Workers of America, AFL-CIO (CWA) was certified by the Board on July 31, 2012, no bargaining occurred with Falcon Data Com, Inc. (Falcon), the predecessor employer. (ALJD 4 LL28-29) Two months later, on September 30, 2012, Respondent, a *Burns*² successor to Falcon, began its unfair labor practices, including its failure to recognize and bargain with CWA, in violation of Section 8(a)(1) and (5). (ALJD 19 LL 17-18, ALJD 29 LL 38-42). On March 28, 2012, the parties entered into a Stipulation and Order Continuing Case under 29 U.S.C. Section 160(j), which was filed with the United States District Court, Eastern District of New York. In accordance with the Stipulation, the parties engaged in their first and second negotiation sessions on May 9 and 29, 2013.

It is well settled that absent unusual circumstances, a union's majority status is conclusively presumed to exist during the initial certification year. *Brooks v. NLRB*, 348 U.S. 96 (1954). Where a successor employer takes over during the initial certification year, the conclusive presumption of majority status extends to it. *Dynamic Machine*, 221 NLRB 1140, 1142 (1975), *enfd.* 552 F.2d 1195 (7th Cir. 1977); *IMS Mfg.*, 278 NLRB 538, 541-542 (1986), *enfd.* 813 F.2d 113 (6th Cir. 1987). Although the certification year ordinarily dates from the Board's certification, where

¹ As used herein, "ALJD" refers to the pages of the Decision of the Administrative Law Judge; and "LL" refers to the line numbers.

² *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

an employer or its successor refuses all bargaining, the certification year will not commence until good-faith bargaining occurs. See, e.g., *Bell & Howell Co.*, 220 NLRB 881, 883 (1975); *NLRB v. Aquabrom*, 855 F.2d 1174, 1183-1184 (6th Cir. 1988). To hold otherwise would thwart the purposes of the Act.

Notwithstanding the commencement of negotiations, the Respondent's many months of refusal to bargain have stripped the unit employees of the benefit of collective bargaining to which they are entitled through their certification of the CWA as their bargaining representative. Further, Respondent's numerous unfair labor practices affected the entire bargaining unit "in the most fundamental way and would likely place [CWA] at a serious bargaining disadvantage in terms of maintaining the support and trust of the employees, thus serving to undercut [CWA's] authority at the bargaining table. *Covanta Energy Corp.*, 356 NLRB No. 98 (2011), citing *Intermountain Rural Elect. Ass'n*, 305 NLRB 783, 789 (1991), *enfd.* 984 F.2d 1562 (10th Cir. 1993) Thus, it is respectfully submitted that a 10-month extension is appropriate in these circumstances and is necessary to allow CWA and Respondent a reasonable period of time for good faith bargaining.

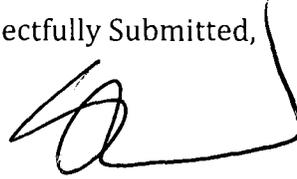
Further, it is respectfully requested that the current Certification of Representative be amended to replace Falcon with Respondent, and to reflect the appropriate bargaining unit as³:

All full and part time technicians, warehouse workers and dispatchers employed by Corbel Installation, Inc. at or out of its facility at 2400 East 69th Street, Brooklyn, NY, excluding all managerial employees, guards and supervisors as defined under the Act.

³ See *Miami Industrial Trucks, Inc.*, 221 NLRB 1223 (1975).

Dated: June 12, 2013
Brooklyn, New York.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Sharon Chau', written over a horizontal line.

Sharon Chau
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