

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

CORBEL INSTALLATIONS, INC.

-and-

COMMUNICATIONS WORKERS OF
AMERICA,

Case No. 29-CA-90466

-and-

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

Party to the Contract

POSITION STATEMENT OF THE
COMMUNICATIONS WORKERS OF AMERICA
IN SUPPORT OF ITS LIMITED EXCEPTIONS

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STATEMENT OF THE ISSUES

1. Should the NLRB extend CWA's the certification as a remedy against Corbel Installations, Inc.?
2. Should the NLRB change the employer's name on the certification?

STATEMENT OF THE FACTS

On May 15, 2013, Administrative Law Judge Mindy E. Landow issued a Decision in Case Number 29-CA-90466 finding that the Respondent, Corbel Installations, Inc., had violated Sections 8(a)(1), (2), (3) and (5) of the Act.

In its brief, the charging party, Communications Workers of America ("CWA"), requested a one year extension of the certification year pursuant to the successor bar doctrine and Mar-Jac exception. In her Decision, Judge Landow failed to grant an extension of the certification year.

ARGUMENT

I. A Mar-Jac Extension Is Appropriate

In order to insure the parties a reasonable time to bargain without outside pressure, such as a rival petition, the Board has required employers honor a certification period of one year. *Mar-Jac Poultry Co.*, 136 NLRB 785, 787 (1962); *Brooks v. N.L.R.B.*, 348 U.S. 96, 98-104. Preserving the certification period provides the union with time to carry out its mandate and limits the employer from undermining the strength of the union and avoiding its duty to bargain. *Mar-Jac Poultry Co.*, 136 NLRB at 787. When an employer

refuses to bargain during this certification period, it takes away the union's "greatest strength" and allows it to take advantage of its own failure to carry out its obligation. *Id.* Therefore, in cases where there is a lack of bargaining or an employer's unfair labor practices delay the bargaining process post-certification, the Board may seek between a 6-month and 12-month certification year extension. *Id.*; GC Memorandum, 9206 Additional Remedies in First Contract Bargaining Cases, 2007 WL 6930996.

To determine the length of a certification period extension, the Board will consider "the nature of the violations, the number, extent, and dates of the collective-bargaining sessions, the impact of the unfair labor practices on the bargaining process, and the conduct of the union during negotiations" *Mercy, Inc.*, 346 NLRB No. 88, slip op. at 3 (citing *Northwest Graphics*, 342 NLRB at 1289; *Wells Fargo Armored Services Corp.*, 322 NLRB 616, 617 (1996)). In cases where there has been no meaningful bargaining post-certification, or where the unfair labor practices have eliminated any progress made during any period of good-faith bargaining, the Board will seek a 12-month certification year extension to return the parties to the status quo. GC Memorandum, 9206 Additional Remedies in First Contract Bargaining Cases, 2007 WL 6930996. When some bargaining has occurred, the Board may provide less than the full 12-month extension certification period with the goal of providing a full 12 months to bargain in good faith or may still provide full 12 month extension if the bargaining has been insufficient. *Northwest Graphics*, 342 NLRB at 1289 (2004) (issuing 12-month extension where there had been

6-months of bargaining because it did not provide full bargaining opportunity for the union); *Glomac Plastics, Inc.*, 234 NLRB 1309, 1323 (1978) (issuing 12-month extension where there had been surface bargaining).

CWA is requesting a 10-month bargaining extension in the instant case. Corbel has begun to bargain with CWA, however, the period of good faith bargaining has lasted less than two months. Corbel committed unfair labor practices in failing and refusing to recognize and bargain with the CWA as the certified exclusive collective-bargaining representative. The CWA was certified July 2012 and would have been insulated from challenges for 10 months after Corbel assumed operations but Corbel never responded to the CWA's demands to bargain. Accordingly, a ten-month certification extension is appropriate.

II. Charging Party May Seek Remedies Not Sought By General Counsel

It is presumed that Judge Landow did not grant an extension of CWA's certification because the Region inadvertently neglected to make such a request in its Complaint. The Region's inadvertent error does not foreclose the granting of such a remedy as the NLRB has the authority to grant an extension of CWA's certification.

Holding that the Board has absolute jurisdiction over remedies, the Board in *Kaumagraph Corporation and United Steelworkers of America* ordered that the Administrative Law Judge permit the introduction of evidence regarding the appropriateness of remedies sought by the Charging party but not sought by the Regional

Director. 313 NLRB 624, 625 (1994). The Regional Director’s complaint alleged that the employer engaged in violations of the Act by closing its facility and relocating work out of state. *Id.*, at 624. The Charging Party requested that the General Counsel seek a restoration and reinstatement remedy in the case but the Regional Director declined. *Id.* After an initial hearing on whether the Charging Party would be permitted to seek a restoration remedy, the ALJ ruled that he would permit the Charging party to argue the matter in its brief but would not allow the Party to introduce evidence in support of restoration at the full hearing. *Id.* The Charging Party appealed the ALJ’s decision to the Board. *Id.*

The Board held that although the General counsel has “exclusive jurisdiction with respect to the investigation and prosecution of unfair labor practices complaints on behalf of the Board...Once a complaint has issued, responsibility” for determining the appropriate remedy rests with the Board itself. *Id.*, at 625 (citing Section 10© of the Act). Ultimately, the Board has full authority over the remedial aspects of its decisions and can fashion appropriate remedies not sought by General Counsel. *Id.* (citing *Schnadig Corp.*, 265 NLRB 147 (1982); *Dean General Contractors*, 285 NLRB 573 fn. 5 (1987)).

CWA respectfully requests that the Board exercise its remedial authority and grant CWA’s request for a 10-month certification extension.

III. Representation Certificate Amended to New Employer if There is Continuity

In *Miami Industrial Trucks*, the Board held that a Certification of Representative

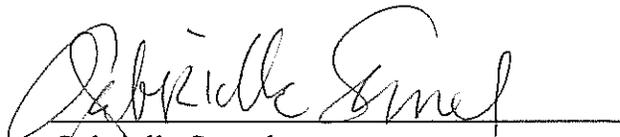
should be amended to change the name of the bargaining unit employer to the successor employer's name because there was substantial continuity between the previous and successor employers. 221 NLRB 1223, 1224-1225 (1975). As Judge Landow has found Corbel Installations, Inc. to be a successor employer to Falcon, amending the certification to reflect the name of the successor employer is appropriate.

CONCLUSION

CWA respectfully requests that the Board grant CWA's limited exceptions for the reasons stated above. CWA also requests that the Board adopt those facts and findings of the Judge to which no exceptions are taken as those findings are supported by credible record evidence.

Dated: June 12, 2013

Respectfully submitted,

A handwritten signature in cursive script, reading "Gabrielle Semel", written over a horizontal line.

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