

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

ADAMS & ASSOCIATES, INC. and
MCCONNELL, JONES, LANIER &
MURPHY, LLP,

Respondents,

And

SACRAMENTO JOB CORPS
FEDERATION OF TEACHERS, AFT
LOCAL 4986, AMERICAN
FEDERATION OF TEACHERS,

Charging Party.

Case Nos. 20-CA-130613, 20-CA-138046

RESPONDENT MCCONNELL, JONES, LANIER & MURPHY, LLP'S

MOTION TO CONTINUE

Mickey L. Washington
WASHINGTON & ASSOCIATES, PLLC
1314 Texas Avenue, Suite 811
Houston, TX 77002
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Attorneys for MCCONNELL, JONES,
LANIER & MURPHY, LLP

January 12, 2015

A. Motion to Postpone the Hearing Date Due to the General Counsel's Addition of Two Significant Section 8(a)(3) Allegations.

Pursuant to Rule 102.16 of the National Labor Relations Board's Rules and Regulations, Respondent McConnell, Jones, Lanier & Murphy, LLP ("MJLM" or "the Employer") files this motion seeking a continuance of the hearing currently set for January 26, 2015 at 9:00 a.m. because of the General Counsel's last-minute decision to amend the Complaint to add two new Section 8(a)(3) allegations. MJLM respectfully requests that the hearing in this matter be postponed until February 9, 2015, March 2, 2015, or March 9, 2015.

The General Counsel initially issued a Complaint against Adams & Associates, Inc. ("AAI") on August 28, 2014 with respect to the unfair labor practice allegations at issue in Case No. 20-CA-130613. The original Complaint included a Notice of Hearing setting the hearing date for December 15, 2014.

On November 12, 2014, the General Counsel issued a second Complaint against AAI – this time with respect to certain unfair labor practice allegations at issue in Case No. 20-CA-138046. The General Counsel also issued an Order Consolidating Case Nos. 20-CA-130613 and 20-CA-138046. On November 24, 2014, the General Counsel issued an Amended Consolidated Complaint, alleging that MJLM and AAI are joint employers. Upon separate motions submitted AAI and MJLM to continue the December 15 hearing date, the hearing was rescheduled to proceed on January 26, 2015.

On December 30, 2014, Tim Peck, Acting Regional Director for Region 20, advised MJLM's counsel that the Region was revoking its prior dismissal of portions of Charge No. 20-CA-130613 regarding AAI's decision not to hire Macord Nguyen and Shannon Cousins-Kamara. (Exhibit A).

On January 6, 2015, less than three weeks prior to the hearing, the General Counsel proceeded to issue a Second Amended and Consolidated Complaint bringing the allegations relating to AAI's decision not to hire Nguyen and Cousins-Kamara. (Exhibit B.) However, MJLM did not receive a copy of the Second Amended and Consolidated Complaint until January 12, 2015.

A continuance is necessary in light of the General Counsel's last-minute amendment to the Complaint that adds two major issues to these proceedings – AAI's decision not to hire two individuals. While MJLM was fully prepared to proceed at the January 26 hearing, it was not expecting the General Counsel to add two new separate and distinct Section 8(a)(3) allegations against the Company. It would be fundamentally unfair, and contrary to any principles of due process, to require MJLM to prepare defenses to these two new significant allegations on such short notice.

Consequently, MJLM joins AAI in their request for continuance.

B. Conclusion.

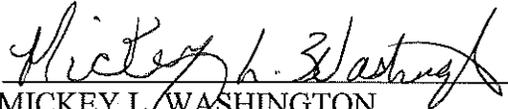
MJLM previously sought a continuance in light of the General Counsel's late decision to add MJLM as a party and proceed on a joint employer theory, which was granted.

The continuance MJLM requested will not in any way prejudice the rights of the Charging Party. On the other hand, and for the reasons stated above, a denial of this Motion will prejudice MJLM as it will be deprived of the opportunity to have adequate time to prepare for the hearing with respect to the newly-added Section 8(a)(3) allegations regarding Nguyen and Cousins-Kamara.

WHEREFORE, McConnell, Jones, Lanier & Murphy, LLP. respectfully requests that the hearing in the matter be postponed until February 2015.

Dated: January 12, 2015

WASHINGTON & ASSOCIATES, PLLC

By: 
MICKEY L. WASHINGTON
Attorneys for Respondent
MCCONNELL, JONES, LANIER &
MURPHY, LLP.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Washington & Associates, PLLC, 1314 Texas Avenue, Suite 811, Houston, TX 77002. On January 12, 2015, I served the within document(s):

- **RESPONDENT MCCONNELL, JONES. LANIER & MURPHY, LLP'S MOTION TO CONTINUE**

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses indicated below and <i>(specify one)</i> : |
| <input type="checkbox"/> | deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. |
| <input checked="" type="checkbox"/> | placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. |
| <input type="checkbox"/> | By fax transmission. As a courtesy, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached. |
| <input checked="" type="checkbox"/> | By e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. |

To the following:

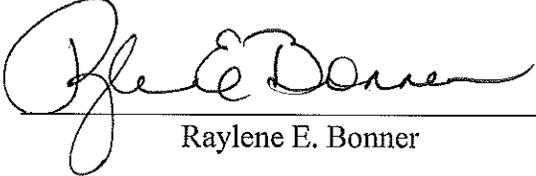
VIA E-MAIL and US MAIL

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I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on January 12, 2015, at Houston, Texas.



Raylene E. Bonner

EXHIBIT "A"



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market St Ste 400
San Francisco, CA 94103-1738

Agency Website: www.nlrb.gov
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December 30, 2014

HOPE J. SINGER
BUSH GOTTLIEB
500 NORTH CENTRAL AVE STE 800
GLENDALE, CA 91203

Re: Adams & Associates, Inc. and McConnell,
Jones Lanier & Murphy, LLP, Joint
Employers
Case 20-CA-130613

Dear Ms. SINGER:

By letter dated September 15, 2014, Regional Director Frankl dismissed portions of the charge that you filed against Adams & Associates and McConnell Jones Lanier & Murphy LLP (Employer). After a review of recently acquired evidence, I have reconsidered that decision. I have now determined that additional proceedings on the portions of the charge alleging that the Employer failed to hire Macord Nguyen and Shannon Cousins-Kamara in violation of Section 8(a)(3) of the Act are warranted. Accordingly, I hereby revoke those portions of the earlier dismissal of your charge that pertain to Mr. Nguyen and Ms. Cousins-Kamara.

Very truly yours,

TIM PECK
Acting Regional Director

cc: TIFFINAY PAGNI
GENERAL COUNSEL & V.P. OF HUMAN
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BRIAN DOYLE, UNION REPRESENTATIVE
SACRAMENTO JOB CORPS FEDERATION OF TEACHERS, AFT LOCAL 4986
1107 NINTH ST STE 460
SACRAMENTO, CA 95814-3811

EXHIBIT "B"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

ADAMS & ASSOCIATES, INC. and
MCCONNELL, JONES, LANIER & MURPHY,
LLP, Joint Employers

and

Cases 20-CA-130613
20-CA-138046

SACRAMENTO JOB CORPS
FEDERATION OF TEACHERS,
AFT LOCAL 4986, AMERICAN FEDERATION
OF TEACHERS

SECOND AMENDED CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING

This Second Amended Consolidated Complaint and Notice of Hearing is based on a charge filed by Sacramento Job Corps Federation of Teachers, AFT Local 4986, American Federation of Teachers (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act) and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Adams & Associates, Inc. (Respondent Adams) and McConnell, Jones, Lanier & Murphy, LLP (Respondent MJLM), jointly referred to as Respondents, have violated the Act as described below.

Previously, a Complaint and Notice of Hearing issued against Respondent Adams in Case 20-CA-130613 on August 28, 2014; a Complaint and Notice of Hearing issued against Respondent Adams in Case 20-CA-138046 on November 12, 2014; and an Order Consolidating Cases issued in these cases on November 12, 2014. On November 24,

Second Amended Consolidated Complaint and Notice of Hearing
Cases 20-CA-130613 and 20-CA-138046

2014, an Amended Consolidated Complaint and Notice of Hearing issued in Cases 20-CA-130613 and 20-CA-138046.

1. (a) The charge in Case 20-CA-130613 was filed by the Union on June 10, 2014, and a copy was served by regular mail on Respondents on June 12, 2014.

(b) A first-amended charge in Case 20-CA-130613 was filed by the Union on July 30, 2014, and a copy was served on Respondents by regular mail on July 31, 2014.

(c) A second-amended charge in Case 20-CA-130613 was filed by the Union on August 11, 2014, and a copy was served on Respondents by regular mail on August 11, 2014.

(d) The charge in Case 20-CA-138046 was filed by the Union on October 1, 2014, and a copy was served by regular mail on Respondents on October 2, 2014.

2. (a) Prior to March 11, 2014, Horizons Youth Services, LLC (Horizons) operated the Sacramento Job Corps Center (the Center) located at 3100 Meadowview Blvd., Sacramento, California, pursuant to a contract with the United States Department of Labor (DOL).

(b) On an unknown date prior to March 11, 2014, DOL awarded a contract to operate the Center to Respondent MJLM.

(c) On or about March 11, 2014, Respondent MJLM assumed operation of the Center and has continued to operate the business in basically unchanged form.

(d) On or about March 11, 2014, Respondent Adams entered into a subcontract agreement with Respondent MJLM to operate the Student Services and Career Transition Services sections of the Center, assumed operation of those sections of the Center, and has continued to operate those sections of the Center in basically unchanged form.

(e) Since about March 11, 2014, Respondent Adams has employed as a majority of its employees at the Center individuals previously employed at the Center by Horizons.

(f) Based on their operations described above in subparagraphs 2(a)–(e), Respondent Adams has continued the employing entity and is a successor to Horizons.

3. (a) At all material times, Respondent MJLM and Respondent Adams have been parties to a contract that provides that Respondent Adams is the agent for Respondent MJLM in connection with the Center and hiring employees for the Center.

(b) At all material times, Respondent MJLM has possessed control over the labor relations policy of Respondent Adams and administered a common labor policy with Respondent Adams for the employees of the Center.

(c) At all material times, Respondent MJLM and Respondent Adams have been joint employers of the employees of the Center.

4. (a) At all material times, Respondent Adams, a Nevada corporation with an office and a place of business in Sacramento, California, has been providing management, educational, and student services at Job Corps Centers both inside and outside the State of California.

(b) In conducting its operations during the 12-month period ending August 25, 2014, Respondent Adams performed services valued in excess of \$50,000 in States other than the State of California.

(c) At all material times, Respondent MJLM, a Texas LLP with an office and place of business in Sacramento, California, has been providing management, educational, and student services at Job Corps Centers both inside and outside the State of California.

(d) In conducting its operations during the 12-month period ending August 25, 2014, Respondent MJLM performed services valued in excess of \$50,000 in states other than the State of California.

5. (a) At all material times, Respondent Adams has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(b) At all material times, Respondent MJLM has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

7. (a) At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent Adams within the meaning of Section 2(13) of the Act:

| | |
|----------------|---------------------------------------|
| Roy A. Adams | President/CEO |
| Jimmy Gagnon | Executive Director |
| Valerie Weldon | Executive Director of Human Resources |
| Kelly McGillis | Deputy Center Director |

Kim McFarland Labor Relations Consultant

(b) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Adams within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Lee Bowman Center Shift Manager

Eric Cordero Center Shift Manager

Amanda West Dorm Supervisor

8. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent MJLM within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Erica Evans Center Director

Sharon E. Murphy Partner

9. (a) The following employees of Respondents (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time Residential Advisors, Non-Residential Advisors, and Day Residential Advisors employed at the Sacramento Job Corps Center.

(b) From at least September 1, 2010, until about March 11, 2014, the Union was the exclusive collective-bargaining representative of the Unit employed by Horizons and during that time the Union was recognized as such representative by Horizons. This recognition was embodied in a collective-bargaining agreement effective

from September 1, 2010, to June 30, 2013, and whose terms were then extended until March 10, 2014.

(c) From at least September 1, 2010, to March 11, 2014, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Unit employed by Horizons.

(d) Since about March 11, 2014, based on the facts described above in subparagraphs 2(a)-(e) and subparagraphs 9(a) and (b), the Union has been the designated exclusive collective-bargaining representative of the Unit.

(e) At all times since about March 11, 2014, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of Respondents' employees in the Unit.

10. (a) On or about March 3, 2014, Respondent Adams refused to hire Genesther Taylor, an employee previously employed by Horizons in the Unit.

(b) On or about March 3, 2014, Respondent Adams refused to hire Macord Nguyen, an employee previously employed by Horizons in the Unit.

(c) On or about March 3, 2014, Respondent Adams refused to hire Shannon Cousins-Kamara, an employee previously employed by Horizons in the Unit.

(d) Respondent Adams engaged in the conduct described above in subparagraphs 10(a)-10(c) because the employees formed, joined and/or assisted the Union and engaged in these activities, and/or in an effort, albeit unsuccessful, to avoid the obligation to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

11. As an alternative to the theory set out in paragraph 10 above:

(a) On or about March 3, 2014, Respondent Adams refused to hire Genesther Taylor, an employee previously employed by Horizons in the Unit.

(b) Respondent Adams engaged in the conduct described above in subparagraph 11(a) because Taylor was the President of the Union, an active Union member, and engaged in concerted activities, and to discourage employees from engaging in these activities.

12. (a) On or about April 15, 2014, Respondent Adams discharged Sheila Broadnax.

(b) On or about July 17, 2014, Respondent Adams discharged Bienvenida Viloría.

(c) On or about July 17, 2014, Respondent Adams discharged Rolando Aspiras.

(d) On or about September 10, 2104, Respondent Adams discharged Vicente Moran.

(e) The subjects set forth above in subparagraphs 12(a), (b), (c), and (d) relate to wages, hours and other terms and conditions of employment of the Unit and are mandatory subjects of bargaining.

(f) Respondent Adams engaged in the conduct described above in subparagraphs 12(a), (b), (c), and (d) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent Adams with respect to this conduct.

13. Since about March 11, 2014, Respondent Adams implemented changes to terms and conditions of employment of employees in the Unit, including but not limited to:

- (a) removing work from the Unit by replacing Residential Advisor positions with new Residential Coordinator positions;
- (b) removing work from the Unit by reclassifying the Non-Resident Advisor as a Non-Resident Counselor;
- (c) ceasing to give effect to the dues-deduction agreement described in the most recent collective-bargaining agreement between Horizons and the Union;
- (d) ceasing to give effect to the Progressive Discipline provision of the most recent collective-bargaining agreement between Horizons and the Union;
- (e) ceasing to give effect to the Seniority provision of the most recent collective-bargaining agreement between Horizons and the Union;
- (f) ceasing to give effect to the Grievance provision of the most recent collective-bargaining agreement between Horizons and the Union;
- (g) eliminating Unit employees' health benefits;
- (h) changing from a fixed shift schedule to a rotating shift schedule for some Unit employees; and
- (i) modifying the terms of the probationary period for Unit employees.

14. (a) The subjects set forth above in paragraph 13 relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(b) Respondent Adams engaged in the conduct described above in paragraph 13 without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent Adams with respect to this conduct.

15. (a) At all material times, Respondent Adams has maintained the following rules:

“Former staff and students, regardless of reason for separation, will not be allowed on Center without the prior authorization of the Center Director or his/her designee.”

“No group or individual who has been previously barred from the Center or whose presence can reasonably be expected to create controversy or disturbance among staff members or student, or who might interfere with their welfare or training, will be allowed on-Center.”

(b) On or about September 10, 2014, Respondent Adams, by Kim McFarland, enforced the rules described above in subparagraph 15(a) selectively and disparately by barring Genesther Taylor from the Center.

16. (a) At all material times, Genesther Taylor has been the Union’s agent for the purpose of collective bargaining with Respondents.

(b) From about September 10, 2014 through about December 2, 2014, Respondent Adams failed and refused to bargain with Genesther Taylor and barred her from the Center.

17. Since about September 10, 2014, Respondents have failed and refused to meet with the Union for collective bargaining at reasonable times and places.

18. By the conduct described in paragraph 15, Respondents have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

19. By the conduct described above in paragraph 10, or alternatively by the conduct described above in paragraph 11, Respondents have been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

20. By the conduct described above in paragraphs 12, 13, 14, 16, and 17 Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

21. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order finding that Respondent MJLM is a joint employer with Respondent Adams, and thus jointly and severally liable with Respondent Adams for remedying the violations alleged above. Moreover, the General Counsel seeks an Order requiring Respondent MJLM, as a joint employer with Respondent Adams, to recognize the Union as the collective-bargaining representative of employees employed in the Unit, and to, upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

FURTHER, as part of the remedy for the unfair labor practices alleged above in paragraphs 10, 11, and 12, the General Counsel seeks an Order requiring Respondents

instate Genesther Taylor, Macord Nguyen and Shannon Cousins-Kamara to positions for which they applied at the Center and make them whole for their losses and reinstate Sheila Broadnax, Bienvenida Vilorio, Rolando Aspiras, and Vicente Moran to their former positions and make them whole for their losses.

FURTHER, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, a responsible agent of Respondent read the Notice to the employees on work time in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondents promptly have a Board agent read the Notice to employees during work time in the presence of Respondent Adams' supervisors and agents identified above in paragraphs 7(a) and (b).

The General Counsel seeks all other appropriate remedies.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Second Amended Consolidated Complaint. The answer must be **received by this office on or before January 20, 2015, or postmarked on or before January 19, 2015.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. *To file electronically, go to www.nlr.gov, click on E- File Documents, enter the NLRB Case Number, and follow the detailed instructions.* The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially

determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the Second Amended Consolidated Complaint are true.

NOTICE OF HEARING

As previously noticed, on the 26th day of January, 2015, 9:00 a.m., and on consecutive days thereafter until concluded, a hearing will be conducted at the John E. Moss Federal Building, Sonoma Conference Room, 650 Capitol Mall, Sacramento, California, before an administrative law judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Second Amended Consolidated

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Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT San Francisco, California, this 6th day of January, 2015.



Joseph F. Frank, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735