



## TABLE OF CONTENTS

TABLE OF CONTENTS	.i
TABLE OF AUTHORITIES	.iii
I. STATEMENT OF THE CASE.	1
II. ISSUES	.2
III. THE STATUTORY SCHEME PURSUANT TO WHICH PETITIONER SEEKS INJUNCTIVE RELIEF	.3
IV THE ROLE OF THE DISTRICT COURT	.4
A. The “Reasonable Cause Standard”	.4
B. The “Just and Proper” Standard	.6
C. The District Court Need Not Hold a Full Evidentiary Hearing. It May Properly Base its Reasonable Cause Determination on the Record in the Underlying Unfair Labor Practice Case.	7
V STATEMENT OF FACTS	.8
VI. ARGUMENT	14
A. There is Reasonable Cause to Believe that Respondent is a Successor Employer Required to Recognize and Bargain with the Union	
1. Respondent Hired a Majority of the Predecessor’s Employees	14
2. Substantial Continuity in the Business Enterprise Exists	15
3. Continuity in the Workforce Exists.	15

B.	There is Reasonable Cause to Believe that Respondent Refused to Recognize and Bargain with the Union in Violation of Section 8(a)(1) and (5) of the Act.	19
C.	There is Reasonable Cause to Believe that Respondent Unilaterally Changed Terms and Conditions of Employment in Violation of Section 8(a)(1) and (5) of the Act.	19
D.	Injunctive Relief is “Just and Proper”	.22
1.	It is “Just and Proper” to Order Respondent to Restore the <i>Status Quo Ante</i> and, Upon Request, Bargain with the Union to Prevent the Board Order from Becoming a Nullity	.22
2.	Interim Relief Will Not Harm Respondent.	.28
3.	The Passage of Time Does Not Preclude Injunctive Relief	.29
VII.	CONCLUSION.	.30

## TABLE OF AUTHORITIES

### SUPREME COURT CASES

<i>Fall River Dyeing &amp; Finishing Corp. v. NLRB</i> , 482 U.S. 27 (1987).	16, 17, 18
<i>NLRB v. Burns Int'l. Sec. Serv., Inc.</i> , 406 U.S. 272 (1972).....	14, 17, 20, 21
<i>NLRB v. Denver Building Construction Trades Council</i> , 341 U.S. 675 (1951).	5

### FEDERAL CASES

<i>Advanced Stretchforming Int'l v. NLRB</i> , 233 F.3d 1176 (9 <sup>th</sup> Cir. 2000).	.20
<i>Aguayo v. Tomco Carburetor Company</i> , 853 F.2d 744 (9 <sup>th</sup> Cir. 1988).	7
<i>Asseo v. Pan American Grain</i> , 805 F.2d 23 (1 <sup>st</sup> Cir. 1986)	7, 26
<i>Bloedorn v. Francisco Foods</i> , 276 F.3d 270 (7 <sup>th</sup> Cir. 2001).	25, 27
<i>Boire v. Pilot Freight Carriers</i> , 515 F.2d 1185 (5 <sup>th</sup> Cir. 1975)	25
<i>Chester v. Grane Healthcare Co.</i> , 666 F.3d 87 (3d Cir. 2011)	22, 23, 25, 28
<i>DeProspero v. House of Good Samaritan</i> , 474 F. Supp. 552 (N.D.N.Y. 1978)	30
<i>Eisenberg v. Hartz Mountain Corp.</i> , 519 F.2d 138 (3d Cir. 1975).	3, 8
<i>Eisenberg v. Honeycomb Plastics Corp.</i> , 1987 WL 109093 (D.N.J. 1987).	5, 6, 7
<i>Eisenberg v. Lenape Properties, Inc.</i> , 781 F.2d 999 (3d Cir. 1986).	7
<i>Eisenberg v. Suburban Transit Corp.</i> , 112 LRRM 2708 (D.N.J. 1983), <i>aff'd per curiam</i> , 720 F.2d 661 (3d Cir. 1983)	28
<i>Eisenberg v. Wellington Hall Nursing Home, Inc.</i> , 651 F.2d 902 (3d Cir. 1981).	4, 5
<i>Frankl v. HTH Corp.</i> , 650 F.3d 1334 (9 <sup>th</sup> Cir. 2011).	23

<i>Fuchs v. Hood Industries Inc.</i> , 590 F.2d 395 (1st Cir. 1978)	5
<i>Garcia v. Sacramento Coca-Cola Bottling Co.</i> , 733 F.Supp. 2d 1201 (E.D.Ca 2010)	26
<i>Gottfried v. Frankel</i> , 818 F.2d 485 (6 <sup>th</sup> Cir. 1987).	5, 7
<i>Harrell v. American Red Cross</i> , 714 F.3d 553 (7 <sup>th</sup> Cir. 2013).	24
<i>Hirsch v. Dorsey Trailers, Inc.</i> , 147 F.3d 243 (3d Cir. 1998)	4, 6, 30
<i>Hoffman v. Cross Sound Ferry Serv., Inc.</i> , 109 LRRM 2884 (1982).	30
<i>I.U.O.E. v. NLRB (Tiidee Products, Inc.)</i> , 426 F.2d 1249 (D.C. Cir.), <i>cert. denied</i> , 400 U.S. 950 (1970)	26, 27
<i>Kennedy v. Teamsters Local 542</i> , 443 F.2d 627 (9 <sup>th</sup> Cir. 1971)	7
<i>Kobell v. Beverly Health and Rehabilitation Services, Inc.</i> , 987 F.Supp. 409 (W.D.Pa. 1997), <i>aff'd</i> , 142 F.3d 428 (3d Cir. 1998)	23
<i>Kobell v. Suburban Lines, Inc.</i> , 731 F.2d 1076 (3d Cir. 1994).	3, 4, 5, 6, 7, 22
<i>Moore-Duncan v. Horizon House Developmental Services</i> , 155 F.Supp.2d 390 (E.D.Pa. 2001).	28
<i>Morio v. North American Soccer League</i> , 632 F.2d 217 (2d Cir. 1980).	26
<i>NLRB v. Hardesty Co., Inc.</i> , 308 F.3d 859 (8 <sup>th</sup> Cir 2002).	26
<i>Pascarell v. Gitano Group Inc.</i> , 730 F. Supp. 616 (D.N.J. 1990)	24
<i>Pascarell v. Orit Corp./Sea Jet Trucking</i> , 705 F.Supp. 200 (D.N.J. 1988) <i>aff'd</i> , 866 F.2d 1412 (3d Cir. 1988).	24, 30
<i>Pascarell v. Vibra Screw, Inc.</i> , 904 F.2d 874 (3d Cir. 1990).	4, 6, 22, 23, 26, 29, 30
<i>San Francisco-Oakland Newspaper Guild v. Kennedy</i> , 412 F.2d 541 (9 <sup>th</sup> Cir. 1988).	7
<i>Schauffler v. Highway Truck Drivers, Local 107</i> , 230 F.2d 7 (3d Cir. 1956).	5, 6

<i>Schauffler v. Local 1291, Int'l Longshoremen's Ass'n.</i> , 282 F.2d 182 (3d Cir. 1961).	5
<i>Seeler v. The Trading Port, Inc.</i> , 517 F.2d 33 (2d Cir. 1975).	28
<i>Silverman v. Major League Baseball Player Relations Committee, Inc.</i> , 880 F. Supp. 246 (S.D.N.Y.), <i>aff'd</i> , 67 F.3d 1054 (2d Cir. 1995).	25
<i>Small v. Avanti Health Systems, LLC</i> , 661 F.3d 1180 (9 <sup>th</sup> Cir. 2011).	25, 27
<i>Squillacote v. Automobile Workers</i> , 383 F. Supp. 491 (E.D.Wis. 1974).	8
<i>Squillacote v. Graphic Arts Int'l Union</i> , 540 F.2d 853 (7th Cir. 1976)	7

### **NATIONAL LABOR RELATIONS BOARD CASES**

<i>Advanced Stretchforming Int'l</i> , 323 NLRB 529 (1997).	20, 21, 22
<i>Brown &amp; Root, Inc.</i> , 334 NLRB 628 (2001).	.20
<i>Concrete Co.</i> , 336 NLRB 1311 (2001).	20
<i>Diamond Motors, Inc.</i> , 212 NLRB 820 (1974).	12
<i>El Dorado Inc.</i> , 335 NLRB 952 (2001)	.20
<i>Gregory Chevrolet</i> , 258 NLRB 233 (1981)	12
<i>Herman Sausage Co., Inc.</i> , 122 NLRB 168 (1958), <i>enforced</i> , 275 F.2d 229 (5th Cir. 1960).	25
<i>Honda of San Diego</i> , 254 NLRB 1248 (1981).	12
<i>In Re McClatchy Newspapers, Inc.</i> , 339 NLRB 1214 (2003)	20
<i>Little Rock Downtowner, Inc.</i> , 168 NLRB 107 (1967), <i>enforced</i> , 414 F.2d 1084 (8th Cir. 1969).	25
<i>Paramus Ford Inc.</i> , 251 NLRB 1019 (2007).	12
<i>Pioneer Concrete of Arkansas</i> , 327 NLRB 333, 335 (1998), <i>enforced mem.</i> , 194 F.3d 1209 (5th Cir. 1999).	.19
<i>Pressroom Cleaners</i> , 361 NLRB No. 57 (2014).	20

<i>Shares, Inc., 343 NLRB 455 (2004)</i>	16, 17
<i>Smoke House Restaurant, 347 NLRB 192 (2006)</i>	20
<i>Worcester Mfg., 306 NLRB 218 (1992)</i>	20
<i>Yellowstone Int'l Mailing, 332 NLRB 386 (2000)</i>	16

**STATUTES**

<i>29 U.S.C. § 157</i>	24
<i>29 U.S.C. § 158(a)(3)</i>	24
<i>29 U.S.C. § 160(a)(1) and (5)</i>	1
<i>29 U.S.C. § 160(j).</i>	1, 3

## **I. STATEMENT OF THE CASE**

In this proceeding, the Regional Director of Region 22 of the National Labor Relations Board (“the Board”), pursuant to 29 U.S.C. § 160(j), (“Section 10(j)”), of the National Labor Relations Act, as amended, (the “Act”) petitions this District Court for temporary injunctive relief pending the Board’s final disposition of this matter.

On May 20, 2015, the Regional Director for Region 22 of the Board, which encompasses Northern New Jersey, issued a Complaint and Notice of Hearing, (“Complaint”), (Petitioner Exhibit B), pursuant to Section 10(b) of the Act in which the Regional Director alleged that, in Board Case 22-CA-140881, Action Cars on 9, LLC d/b/a Action Chevrolet of Freehold, (“Respondent”), violated 29 U.S.C. Section 158(a)(1) and (5) (“Section 8(a)(1) and (5)”), of the Act as set forth below in the “Issues” section of this memorandum.

An administrative hearing regarding the unfair labor practices alleged in the Complaint will be held before a Board Administrative Law Judge, (“ALJ”), commencing on July 21, 2015.

On June 30, 2015, the Board authorized the Petitioner to seek injunctive relief pursuant to Section 10(j) of the Act with regard to the allegations enumerated in the Complaint. The Petitioner requests the Court to order Respondent to cease and desist from certain unfair labor practices and to take certain affirmative action

as set forth in the Petition. This Memorandum is submitted in support of the Petition.

## **II. ISSUES**

A. Whether there is “reasonable cause” to believe that Respondent is a “successor employer,” thereby requiring Respondent to recognize and bargain with the Local 355, United Service Workers, IUJAT (“the Union”).

B. Whether there is “reasonable cause” to believe that Respondent refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of its bargaining unit employees in violation of Section 8(a)(1) and (5) of the Act.

C. Whether there is “reasonable cause” to believe that Respondent made unilateral changes to the terms and conditions of employment of its bargaining unit employees in violation of Section 8(a)(1) and (5) of the Act.

D. Whether issuance of an Order requiring Respondent to cease and desist from its unlawful conduct, recognize and bargain with the Union as the exclusive collective bargaining agent of its bargaining unit employees, restore the terms and conditions of employment of the bargaining unit employees, as reflected in the collective bargaining agreement that expired on February 28, 2015 and take certain other affirmative action is “just and proper.”

### III. THE STATUTORY SCHEME PURSUANT TO WHICH PETITIONER SEEKS INJUNCTIVE RELIEF

Section 10(j)<sup>1</sup> authorizes United States District Courts to grant temporary injunctions pending the Board's resolution of unfair labor practice proceedings.<sup>2</sup> This provision reflects Congressional recognition that, because the Board's administrative proceedings often are protracted, in many instances, absent interim relief, a respondent could accomplish its unlawful objective before being placed under legal restraint, and thereby rendering a final Board order ineffectual. *See, Kobell v. Suburban Lines, Inc.*, 731 F.2d 1076, 1091 n.25 (3d Cir. 1994), (citing Senate Rep. No. 105, 80<sup>th</sup> Cong., 1st Session, at pp. 8, 27 (1947) reprinted at *I. Legislative History of the Labor Management Relations Act of 1947*, 414, 433

---

<sup>1</sup> Section 10(j) provides:

The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States within any district wherein the unfair labor practices in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper. 29 U.S.C. § 160(j).

<sup>2</sup> In the Third Circuit, Section 10(j) injunctive relief is to be effective for a period of time not to exceed six months, or until the Board's ALJ issues a Decision and Recommended Order, whichever occurs first, and may be extended for an additional period of time, not to exceed six months, or until the Board issues its Decision and Order, whichever occurs first. *Eisenberg v. Hartz Mountain Corp.*, 519 F.2d 138, 144 (3d Cir. 1975). The Circuit has stated further that these six-month limitations shall not preclude a district judge from extending the life of any Section 10(j) injunction for an additional thirty-day period upon a showing that administrative action on the underlying controversy seems to be imminent. *Id.*

(Government Printing Office 1985)). *Accord Hirsch v. Dorsey Trailers Inc.*, 147 F. 3d 243, 246 (3d Cir. 1998); *Pascarell v. Vibra Screw, Inc.*, 904 F. 2d 874, 878 (3d Cir. 1990).

#### **IV. THE ROLE OF THE DISTRICT COURT**

A District Court's role in these injunctive proceedings is limited to making two determinations: (1) whether there is "reasonable cause" to believe that unfair labor practices have been committed; and (2) whether the injunctive relief sought is "just and proper." *Pascarell v. Vibra Screw, Inc.*, 904 F.2d at 877; *Kobell v. Suburban Lines, Inc.*, 731 F.2d at 1084 n.25 (interim relief under Section 10(j) may be granted without showing irreparable harm or a likelihood of success on the merits, the ordinary requisites for an injunction). The burden faced by the Board in winning 10(j) relief is "relatively insubstantial." *Kobell v. Suburban Lines, Inc.*, 731 F.2d at 1084.

##### **A. The "Reasonable Cause" Standard**

In determining whether there is reasonable cause to believe that the Act has been violated, a District Court does not decide the merits of the case and the Regional Director need not adduce evidence sufficient to prove a violation. *Id.*; *Eisenberg v. Wellington Hall Nursing Home, Inc.*, 651 F.2d 902, 906 (3d Cir. 1981). Instead, the reasonable cause standard imposes a "low threshold of proof." *Eisenberg v. Wellington Hall Nursing Home, Inc.*, 651 F.2d at 905-06. The

“reasonable cause” standard requires the District Court to find: (1) that the Regional Director’s case depends upon a substantial, non-frivolous legal theory, implicit or explicit; and (2) that there is sufficient evidence, taking the facts favorably to the Board, to support that theory. *Kobell v. Suburban Lines, Inc.*, 731 F.2d at 1084.

The District Court should not attempt to resolve disputed facts or determine the credibility of witnesses. *Gottfried v. Frankel*, 818 F.2d 485, 493-94 (6<sup>th</sup> Cir. 1987); *Schauffler v. Local 1291, Int’l Longshoremen’s Ass’n.*, 282 F.2d 182, 186 n.4 (3d Cir. 1961); *Eisenberg v. Honeycomb Plastics Corp.*, 1987 WL 109093, \*4 (D.N.J. 1987) The District Court’s sole function in this regard is to determine whether the Board could ultimately resolve any contested factual issues raised by the evidence presented in favor of the Petitioner. *Eisenberg v. Wellington Hall Nursing Home, Inc.*, 651 F.2d at 906; *Eisenberg v. Honeycomb Plastics Corp.*, 1987 WL 109093, at \*4; *Fuchs v. Hood Industries Inc.*, 590 F.2d 395, 397 (1st Cir. 1978). The ultimate determination with respect to both issues of fact and law, is reserved exclusively for the Board, subject to review by the Courts of Appeal pursuant to Section 10(e) and (f) of the Act. *NLRB v. Denver Building Construction Trades Council*, 341 U.S. 675, 681-83 (1951); *Eisenberg v. Wellington Hall Nursing Home, Inc.*, 651 F.2d at 906; *Schauffler v. Highway Truck*

*Drivers, Local 107*, 230 F.2d 7 (3d Cir. 1956); *Eisenberg v. Honeycomb Plastics, Corp.* 1987 WL 109093, at \*3.

**B. The “Just and Proper” Standard**

A motion for temporary injunctive relief under Section 10(j) differs significantly from an ordinary motion for a preliminary injunction. Interim relief under Section 10(j) may be granted without showing irreparable harm or a likelihood of success on the merits. *Hirsch v. Dorsey Trailers Inc.*, 147 F.3d at 247. Injunctive relief is “just and proper” under Section 10(j) “when the nature of the alleged unfair labor practices are likely to jeopardize the integrity of the bargaining process and thereby make it impossible or not feasible to restore or preserve the status quo pending litigation.” *Pascarell v. Vibra Screw, Inc.*, 904 F.2d at 878. “The critical determination” for the Court is “whether, absent an injunction, the Board’s ability to facilitate peaceful management-labor negotiation will be impaired.” *Id.* at 879. An injunction is appropriate when a failure to grant interim relief likely would “prevent the Board, acting with reasonable expedition, from exercising its ultimate remedial powers.” *Kobell v. Suburban Lines, Inc.*, 731 F.2d at 1091-92. The determination that the relief sought is “just and proper” requires a finding by the court that “it is in the public interest to grant the injunction, so as to effectuate the policies of the [Act] or to fulfill the remedial

function of the Board.” *Eisenberg v. Lenape Properties, Inc.*, 781 F.2d 999, 1003 (3d Cir. 1986) (citations omitted).

**C. The District Court Need Not Hold a Full Evidentiary Hearing. It May Properly Base Its Reasonable Cause Determination on the Record in the Underlying Unfair Labor Practice Case.**

In view of Petitioner’s “relatively insubstantial burden of proof,” *Kobell v. Suburban Lines*, 731 F.2d at 1084, it is not necessary for a District Court to hold a full evidentiary hearing to enable it to conclude whether “reasonable cause” has been established. *See Gottfried v. Frankel*, 818 F.2d at 493-94; *San Francisco-Oakland Newspaper Guild v. Kennedy*, 412 F.2d 541, 546 (9<sup>th</sup> Cir. 1988).

The weight of judicial authority holds that it is proper for a District Court to base its “reasonable cause” determination in Section 10(j) cases upon evidence presented in the form of affidavits, or the transcript of a Board hearing before an ALJ. *Aguayo v. Tomco Carburetor*, 853 F.2d 744, 750-51 (9<sup>th</sup> Cir. 1988); *Squillacote v. Graphic Arts Int’l Union*, 540 F.2d 853, 860 (7<sup>th</sup> Cir. 1976). *Accord, Gottfried v. Frankel*, 818 F.2d at 493 (combination of affidavits and transcript of the hearing before an ALJ); *Asseo v. Pan American Grain*, 805 F.2d 23, 25-26 (1<sup>st</sup> Cir. 1986); *San Francisco-Oakland Newspaper Guild v. Kennedy*, 412 F.2d at 546 (affidavits); *Kennedy v. Teamsters Local 542*, 443 F.2d 627, 630 (9<sup>th</sup> Cir. 1971) (affidavits); *Eisenberg v. Honeycomb Plastics*, 1987 WL 109093 at

\*2 (transcript of the hearing before an ALJ); *Squillacote v. Automobile Workers*, 383 F. Supp. 491, 493 (E.D. Wis. 1974) (affidavits).

Reliance on affidavits, administrative transcripts, and exhibits to support a Petitioner's application for injunctive relief will avoid the delay inherent in scheduling and conducting a full evidentiary hearing, will avoid duplicative litigation, will facilitate a speedy decision, and will conserve the time and the resources of the Court and parties. Petitioner also requests that the Court grant leave to supplement such record with oral testimony bearing on the issue of the just and proper necessity for injunctive relief in this case. *See, Eisenberg v. Hartz Mountain*, 519 F.2d at 143 fn.5.

## **V. STATEMENT OF FACTS**

Respondent operates an automobile dealership located in Freehold, New Jersey. Respondent's dealership engages in the retail sale of automobile and related products and provides automobile service and repair. Prior to Respondent's purchase of the dealership on or about October 20, 2014,<sup>3</sup> the dealership had been owned and operated by Pine Belt Chevrolet ("the Predecessor").

Since 1994, the Union has represented a bargaining unit consisting of the dealership's Service Department and Parts Department employees ("the unit

---

<sup>3</sup> All dates are in 2014 unless otherwise specified.

employees”).<sup>4</sup> The Predecessor and the Union were parties to a collective-bargaining agreement that was effective from March 10, 2010 until about February 28, 2013. The Predecessor and the Union then, by oral agreement, extended the contract to February 28, 2015 with some changes. As of October 13, the Predecessor employed five Service Department employees and two Parts Department employees, who were represented by the Union for collective-bargaining purposes.

In about September, the Predecessor’s Labor Representative, Jeffrey Isaacs, told Union Business Agent Edward Kahn that Respondent was purchasing the dealership from the Predecessor. On or about October 20, the Predecessor sold the dealership to Respondent. At the time of the October 20 sale to Respondent, seven unit employees were employed by the Predecessor. Additionally, on or about October 20, Wally Darvish, Respondent’s Manager, came to the dealership and spoke with the Predecessor’s employees, including unit and non-unit employees.

At the meeting, Darvish told employees that all of their jobs were safe. Darvish also told employees that there would be no union at the dealership, that a union was not wanted in the shop, and that there would be a rehire process for all Union represented unit members. Darvish announced that while Respondent

---

<sup>4</sup> The Union also represented a separate bargaining unit consisting of Pine Belt’s sales employees. The sales employees are not in issue in this or the underlying Board case.

would continue to pay the same wages as well as the first three months of COBRA payments, “great changes” would take place under the new owner and that Respondent would not offer the paid vacations previously enjoyed by the unit employees under the Predecessor.

On or about October 21, Darvish conducted individual interviews of each unit employee. According to payroll records dated October 19 through October 25 and the Union’s dues checkoff records, all seven unit employees were hired and started working for Respondent the following day, October 22.<sup>5</sup> (Petitioner Exhibits C and D). In addition, Respondent hired the Predecessor’s Service Manager Bob Irving and Parts Manager John Ferrao.

During the October 21 interview process, Darvish bargained directly with certain unit employees. More specifically, Darvish agreed to eliminate certain undesirable job responsibilities within job classifications in exchange for wage decreases. Darvish also explained to one unit employee that Respondent did not guarantee a forty hour work week, as the Predecessor had done.

When Respondent began operating the dealership on or about October 21, Respondent lengthened the employees’ work day from 8:00 a.m. – 4:30 p.m. under the Predecessor to 8:00 a.m. – 5:00 p.m. Respondent changed the personal and sick leave policies, as well as the time Service Department employees could bill

---

<sup>5</sup> Robert Barnet, David Bertram, William Clemens, Anthony Colucci, Michael Daly, Kevin Muschichin, Gregory Stengel

for their work (“flag times”). Respondent also eliminated unit employee health insurance, life insurance, dental insurance, and security fund payments. Respondent changed these conditions of employment without notifying the Union and without affording the Union with an opportunity to bargain regarding these changes.

Aside from changing terms and conditions of employment, the dealership’s operations remain unchanged under Respondent’s ownership. Respondent continues to operate the same equipment, including the number of lifts and alignment machines, that were in operation when the Predecessor owned the dealership. Service Department employees continue to service and repair cars. Parts Department employees continue to find automobile repair parts for technicians. No new training has been provided by Respondent to the unit employees. Respondent only made some cosmetic changes to the business; such as changing the storefront signage and remodeling the bathroom, the waiting area, and the service manager’s office.

By letter dated November 4, Union Business Agent Kahn wrote to Darvish stating the following, in pertinent part:

As you are aware [the Union] and Pine Belt Chevrolet of Freehold are parties to a collective bargaining agreement.

As a successor to that agreement, [Respondent] is bound to the terms and conditions of the collective bargaining agreement between Pine Belt and [the Union]. As part of

that agreement there are required payments to the United Welfare Fund for health benefits as well as payments on behalf of our members to the United Service Workers Security Fund.

(Petitioner Exhibit E).

By letter dated November 5, Respondent's Managing Member, Leonard Datello, responded to Kahn's November 4 letter stating the following, in pertinent part:

[Respondent] is absolutely not a successor to any collective bargaining agreement between Pine Belt Chevrolet of Freehold and [the Union] and is not bound by any terms and conditions of any such agreement.

(Petitioner Exhibit F).

By letter dated November 10, Kahn responded to Datello's November 5 letter stating the following, in pertinent part:

[Respondent] hired all or virtually all of the automotive technicians<sup>6</sup> previously employed by Pine Belt and it obviously continued these employees in the same or essentially the same business. My November 4, 2014 letter reiterated [the Union's] demand for recognition as the representative of these employees.

---

<sup>6</sup> While Kahn's November 10 letter refers only to the service technicians, the collective-bargaining agreement referred to in Kahn's November 4 and 10 letters covers both the Service and Parts Department employees. The Union need not have specified each job classification it represents when the relevant collective-bargaining agreement specifies each unit position. *Paramus Ford Inc.*, 351 NLRB 1019, 1023-24 (2007) citing *Honda of San Diego*, 254 NLRB 1248, 1263 (1981); *Gregory Chevrolet*, 258 NLRB 233, 238 (1981) and *Diamond Motors, Inc.*, 212 NLRB 820, 829 (1974).

[The Union] once again demands recognition as the representative of the service technicians now employed by [Respondent].

(Petitioner Exhibit G).

By letter dated November 12, Datello responded to Kahn's November 10 letter stating the following, in pertinent part:

In fact, less than fifty percent (50%) of the former members of the union who were employed by Pine Belt Chevrolet of Freehold have been and are employed by us. In fact less than fifty percent (50%) of the automotive technicians who were members of the union and employed by Pine Belt Chevrolet of Freehold have been employed by us. Consequently, under applicable NLRB law and pursuant to my letter of November 6, 2014, [Respondent] is absolutely not a successor to any collective bargaining agreement between Pine Belt Chevrolet of Freehold and [the Union], is not bound by any terms and conditions of any such agreement, and is not obligated to recognize [the Union] as representative of any automotive technicians who may be employed by [Respondent].

For the reasons set forth in the previous paragraph, [Respondent] will not recognize [the Union] as the representative of any of our employees.<sup>7</sup>

(Petitioner Exhibit H).

By letter dated November 14, Kahn wrote Datello requesting a grievance meeting with Respondent over the termination of unit employee David Bertram. (Petitioner Exhibit I). Datello did not respond. By letter dated November 18,

---

<sup>7</sup> Respondent's incorrectly states that less than 50% of the Predecessor's unit employees are employed by Respondent. As previously stated, Respondent employed all seven of the Predecessor's unit employees. (Petitioner Exhibits C and D).

Kahn followed up his November 14 grievance request to Datello requesting a response. (Petitioner Exhibit J). Datello did not respond.

The most recent payroll records from Respondent possessed by the Board, dated February 8 through February 14, demonstrate that only four unit employees continued to be employed by Respondent. (Petitioner Exhibit K). Three employees have either left the unit or have considered leaving due to the Respondent's refusal to honor the terms and conditions of the collective-bargaining agreement.

## VI. ARGUMENT

### A. There is Reasonable Cause to Believe that Respondent is a Successor Employer Legally Obligated Under the NLRA to Recognize and Bargain with the Union.

A purchasing employer that acquires a predecessor's operations and is legally required to succeed to the predecessor's collective-bargaining obligation is referred to as a "successor employer." A successor employer is obligated to recognize and bargain with the Union if (1) the successor has hired a majority of the predecessor's employees, (2) there is a substantial continuity in the business enterprise, and (3) there is continuity of workforce. *NLRB v. Burns Int'l. Sec. Serv., Inc.*, 406 U.S. 272 (1972).

#### 1. Respondent Hired a Majority of the Predecessor's Employees.

There is no dispute that Respondent hired a majority of the Predecessor's employees. On October 20, Darvish announced to the unit employees that their

jobs were safe. In fact, Respondent hired **all** seven of the Predecessor's unit employees, according to payroll records dated October 19 through October 25. (Petitioner Exhibit D).

## **2. Substantial Continuity in the Business Enterprise Exists.**

There is also no dispute that there is substantial continuity in the business enterprise. There has been no hiatus in operation between the time the Predecessor sold the dealership to Respondent and Respondent commenced operations. Moreover, Respondent continues to perform the same type of work, employ workers within the same job classifications, and use the same equipment and facility as the Predecessor. Just like the Predecessor, Respondent operates a dealership that services and repairs automobiles, in addition to selling automobile parts and related products. Respondent also continues to operate the same eleven lifts and alignment machines. The Predecessor's unit employees have not received any additional training since being hired by Respondent. With the exception of a few cosmetic changes, there has been no change in the business enterprise.

## **3. Continuity of the Workforce Exists.**

Respondent hired all of the Predecessor's unit employees in the Service and Parts Departments; therefore, continuity of the workforce exists. The Predecessor employed seven unit employees in its Service and Parts Departments. According to payroll records dated October 19 through October 26, Respondent employed the

same seven employees in the Parts and Service Departments when it started operating the dealership. (Petitioner Exhibits C and D). These employees continued to perform the same works, utilize the same equipment, and report to the same supervisors.

Respondent has advised Petitioner that it denies that there is continuity of the workforce under the Supreme Court's substantial and representative complement rule. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987). The Supreme Court held that a successor employer's bargaining obligation will not attach until it hires a substantial and representative complement of the employer's projected workforce. The substantial and representative complement rule considers (1) whether a majority of the predecessor's employees have been hired at the time when job classifications designed for operations have been substantially filled and (2) whether the operation is in normal or substantially normal production. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. at 49. The Board further clarified the substantial and representative complement rule and held that a complement is substantial and representative "when approximately 30 percent of the eventual employee complement is employed in 50 percent of job classifications." *Shares, Inc.*, 343 NLRB 455 fn. 2 (2004); *Yellowstone Int'l Mailing*, 332 NLRB 386 (2000).

The substantial and representative complement rule does not control here because there has been neither a prolonged start-up period with gradual or staggered hiring of employees nor a hiatus in operations. Instead, Respondent immediately hired a full complement of employees, it continues to operate the Predecessor's same eleven lifts and alignment machines, and employees have not undergone further training.

Assuming *arguendo* that the rule applies, Respondent's argument nonetheless fails. Respondent advised Petitioner that its projected representative complement in the Service Department to operate at normal production is fourteen employees. On November 4, when the Union made its demand for recognition, payroll records for the period dated November 2 through November 8 indicate that Respondent had hired four of the Predecessor's unit employees in the Service Department. (Petitioner Exhibit L). Thirty percent of fourteen employees is approximately four employees.<sup>8</sup> There are two job classifications in the unit—Service and Parts. Thus, even assuming Respondent's assertion *that Fall River Dyeing* applies, as it had not yet reached its planned full operation, four employees constitute a substantial and representative complement in fifty percent of the job classifications.

---

<sup>8</sup> Thirty percent of fourteen employees is technically 4.2 employees. Four employees are sufficient because the Board held that a substantial and representative complement exists when *approximately* thirty percent of the eventual employee complement is employed. *Shares, Inc.*, 343 NLRB 455 fn.2.

Alternatively, Respondent advised Petitioner that its projected representative complement is a total of eighteen employees in the Service and Parts Departments. Thirty percent of eighteen employees is 5.4 employees. When the Union demanded recognition on November 4, four of the Predecessor's employees were hired in the Service Department and two of the Predecessor's employees were hired in the Parts Department, according to payroll records for the period dated November 2 through November 8. (Petitioner Exhibit L). Thus, even assuming Respondent's assertion that *Fall River Dyeing* applies, as it had not yet reached its planned full operation, six employees constitute a substantial and representative complement in a hundred percent of the job classifications.

Assuming *arguendo* that the substantial and representative complement rule applies, which it does not for the reasons stated above, Respondent had a substantial and representative complement when the Union demanded recognition on November 4 regardless of which projection is accurate. Therefore, continuity of the workforce existed.

There is reasonable cause to believe that Respondent is a successor employer obligated to recognize and bargain with the Union. When the Union demanded recognition on November 4, Respondent had employed a majority of the Predecessor's unit employees. Respondent also continued to operate the Predecessor's dealership with no substantial changes in operations. Finally,

Respondent continued to employ the same workforce as the Predecessor in the Service and Parts Departments.

**B. There is Reasonable Cause to Believe that Respondent Refused to Recognize and Bargain with the Union in violation of Section 8(a)(1) and (5) of the Act.**

Since Respondent is a successor employer, Respondent incurred an obligation to recognize and bargain with the Union. By letters dated November 4 and November 10, the Union requested recognition as the exclusive representation of the unit employees. (Petitioner Exhibits E and G). In response, by letters dated November 5 and November 12, Respondent refused to recognize the Union. (Petitioner Exhibits F and H). Therefore, there is reasonable cause to believe that, as the successor employer, Respondent committed an unfair labor practice by failing to recognize and bargain with the Union in violation of Section 8(a)(1) and (5) of the Act. *NLRB v. Burns Int'l. Sec. Serv., Inc.*, 406 U.S. at 280-81; *Pioneer Concrete of Arkansas*, 327 NLRB 333, 335 (1998), *enforced mem.*, 194 F.3d 1209 (5<sup>th</sup> Cir. 1999).

**C. There is Reasonable Cause to Believe that Respondent Unilaterally Changed Terms and Conditions of Employment in Violation of Section 8(a)(1) and (5) of the Act.**

Absent the commission of an unfair labor practice, a successor employer is not bound by terms of a predecessor's existing collective-bargaining agreement and is free to unilaterally set new and initial terms and conditions of employment.

*NLRB v. Burns Int'l. Sec. Serv., Inc.*, 406 U.S. at 281. That right, however, is forfeited when the successor employer informs its employees that it intends to operate non-union. *Advanced Stretchforming Int'l*, 323 NLRB 529, 530-31 (1997), *enf'd in pertinent part*, 208 F.3d 801 (9<sup>th</sup> Cir. 2000), *amended on other grounds*, 233 F.3d 1176 (9<sup>th</sup> Cir. 2000), *cert. denied*, 534 U.S. 948 (2001); *see also Pressroom Cleaners*, 361 NLRB No. 57 (2014); *Smoke House Restaurant*, 347 NLRB 192, 204-05 (2006); *Concrete Co.*, 336 NLRB 1311 (2001); *El Dorado Inc.*, 335 NLRB 952, 952-53 (2001); *Worcester Mfg.*, 306 NLRB 218, 219 (1992). Once such a statement is made, the successor employer is bound by the terms of the existing collective-bargaining agreement because such an “unlawful statement[] chill[s] the employees’ right to invoke the successor’s bargaining obligations and thereby, like discriminatory hiring ‘block[s] the process by which the obligations and rights of such a successor are incurred.’” *Brown & Root, Inc.*, 334 NLRB 628 (2001) (quoting *Advanced Stretchforming Int'l v. NLRB*, 233 F.3d at 1181), *enf. denied on other ground* 333 F.3d 628 (5<sup>th</sup> Cir. 2003). The successor employer is, therefore, prohibited from making unilateral changes to wages, hours, and other terms and conditions of employment that are mandatory subjects of bargaining. *In Re McClatchy Newspapers, Inc.*, 339 NLRB 1214 (2003).

On or about October 20, Respondent’s Manager Darvish informed all employees present that there would be job continuity but that there would be “no

union at the dealership.” By informing the Predecessor’s unit employees, its intended job applicants, that it intended to operate non-union, Respondent forfeited the right to set initial terms and conditions of employment. Respondent was then bound to the terms of the existing collective-bargaining agreement and could not lawfully change any terms and conditions of employment contained in that agreement without committing an unfair labor practice. *Advanced Stretchforming Int’l*, 323 NLRB at 530-31.

Thus, there is reasonable cause to believe that Respondent forfeited its ordinary right to establish employees’ initial terms and conditions of employment when it unequivocally communicated its intention to refuse to recognize the Union. By decreasing wages, lengthening the work day, changing personal and sick time accrual, and eliminating the guaranteed forty hour work week, vacations, flag times, health, life, and dental insurance without any notice to or bargaining with the Union, Respondent unlawfully changed its employee’s mandatory terms and conditions of employment in violation of Section 8(a)(1) and (5) of the Act.

Based on the foregoing, there is reasonable cause to believe that Respondent is a successor employer and, thus, has a legal obligation to recognize and bargain with the Union. *NLRB v. Burns Int’l. Sec. Serv., Inc.*, 406 U.S. at 280-81. Moreover, by Respondent’s repeated statement that there would be no union at the dealership, Respondent forfeited its right to set unilaterally new terms and

conditions of employment. *Advanced Stretchforming Int'l*, 323 NLRB at 530-33. Therefore, Respondent's explicit refusal to recognize the Union, and its failure to bargain with the Union over its unit employees' terms and conditions of employment prior to making unilateral changes, establishes reasonable cause to believe that Respondent has violated the Act as alleged in the Petition.

**D. Injunctive Relief is "Just and Proper."**

Petitioner seeks an interim order requiring Respondent to cease and desist from its unlawful conduct, recognize and bargain with the Union as the exclusive collective bargaining agent of its bargaining unit employees, and reinstate the terms and conditions of employment of the bargaining unit employees, as reflected in the collective-bargaining agreement that expired on February 28, 2015.

**1. It is "Just and Proper" to Order Respondent to Restore the *Status Quo Ante* and Bargain with the Union to Prevent the Board Order from Becoming a Nullity.**

Interim relief is "just and proper" where the employer's continued unfair labor practices would create irreparable harm that could not be remedied at the time of a final Board decision. *Chester v. Grane Healthcare Co.*, 666 F.3d 87, 98 (3d Cir. 2011); *Pascarell v. Vibra Screw, Inc.*, 904 F.2d at 878. The critical determination is "whether the failure to grant interim injunctive relief would be likely to prevent the Board, acting with reasonable expedition, from effectively exercising its ultimate remedial powers." *Kobell v. Suburban Lines, Inc.*, 731 F.2d

1076, 1091-92 (3d Cir. 1984). The Court is tasked with weighing the potential harms of injunctive relief against the potential benefits. *Chester v. Grane Healthcare Co.*, 666 F.3d at 98. In so doing, various factors are evaluated, such as the chilling effect of an employer's action, the overall harm to the bargaining process, and the overall public interest in promoting the settlement of labor disputes through collective bargaining. *Id.*; *Pascarell v. Vibra Screw, Inc.*, 904 F.2d at 876.

The courts place great emphasis on “the public interest implicit in protecting the collective bargaining process. ” *Kobell v. Beverly Health and Rehabilitation Services, Inc.*, 987 F.Supp. 409, 414 (W.D.Pa. 1997), *aff'd*, 142 F.3d 428 (3d Cir. 1998) (citing *Pascarell v. Vibra Screw, Inc.*, 904 F.2d at 897). “[C]entral statutory violations such as “violations of § 8(a)(5),” inherently involve “the likelihood of irreparable injury, absent some unusual circumstance indicating that the union support is not being affected or that bargaining could resume without detriment as easily later as now.” *Frankl v. HTH Corp.*, 650 F.3d 1334, 1362 (9<sup>th</sup> Cir. 2011). No such circumstances exist in the case at hand.

In the instant matter, Respondent has undermined the public interest in promoting collective bargaining by rendering the employees' long-term choice of their collective-bargaining representative a nullity. By refusing to apply the contract and recognize and bargain with the Union, Respondent has made it clear

to its employees that it controls the employees' terms and conditions of employment and that the Union is completely powerless in assisting them. For example, when the Union filed a grievance on behalf of a terminated employee, Respondent refused to cooperate in the grievance procedure set out in the collective-bargaining and refused to even respond to the Union. Clearly, interim relief is necessary in order to assure Respondent's unit employees that their rights under Section 7 of the Act may be exercised.<sup>9</sup> Here, a final Board order "would come too late to have any meaningful effect to these people." *Pascarell v. Orit Corp./Sea Jet Trucking*, 705 F.Supp. 200, 205 (D.N.J. 1988) *aff'd*, 866 F.2d 1412 (3d Cir. 1988); *Pascarell v. Gitano Group, Inc.*, 730 F.Supp. 616, 624 (D.N.J. 1990). Injunctive relief is necessary here to guarantee the employees that their Section 7 rights are not a mere formality.

Respondent's unfair labor practices strike at the heart of a union's ability to represent employees by allowing an employer to enjoy the fruits of its unlawful conduct and gain an undue bargaining advantage. *See Harrell v. American Red*

---

<sup>9</sup> Under Section 7 of the Act:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title]. 29 U.S.C. § 157.

*Cross*, 714 F.3d 553, 557 (7<sup>th</sup> Cir. 2013)(“unilateral changes prevent the Union from discussing terms, and therefore, ‘strike at the heart of the Union’s ability to effectively represent the unit employees’”); *Little Rock Downtowner, Inc.*, 168 NLRB 107, 108 (1967), *enf’d*, 414 F.2d 1084 (8<sup>th</sup> Cir. 1969); *Herman Sausage Co., Inc.*, 122 NLRB 168, 172 (1958), *enf’d*, 275 F.2d 229 (5<sup>th</sup> Cir. 1960). Additionally, without an interim remedy, “guilty parties could violate the Act with impunity during the years of pending litigation, thereby often rendering a final order ineffectual or futile.” *Boire v. Pilot Freight Carriers*, 515 F.2d 1185, 1188 (5<sup>th</sup> Cir. 1975). Absent interim relief, the employees’ working conditions will be virtually unaffected by collective bargaining for several years and employees will be deprived of any benefits of their Union pending the Board’s decision; a loss that the Board order cannot in due course remedy. *See, e.g. Chester v. Grane Healthcare Co.*, 666 F.3d at 103 (citing *Bloedorn v. Francisco Foods*, 276 F.3d 270, 299 (7<sup>th</sup> Cir. 2001)); *Small v. Avanti Health Systems, LLC*, 661 F.3d 1180, 1191-1192 (9<sup>th</sup> Cir. 2011). Thus, interim rescission of Respondent’s unilateral changes, is necessary to allow the parties to effectively engage in good faith collective bargaining while the unfair labor practice case is pending before the Board. *See Silverman v. Major League Baseball Player Relations Committee, Inc.*, 880 F. Supp. 246, 259 (S.D.N.Y.), *aff’d*, 67 F.3d 1054 (2d Cir. 1995) (interim rescission of unilateral change appropriate to “salvage some of the important

bargaining equality that existed” prior to violations); *see also Pascarell v. Vibra Screw, Inc.*, 904 F.2d at 878-79.

An interim order requiring Respondent to restore the terms of the collective-bargaining agreement and recognize and bargain with the Union pending the Board’s final decision is crucial to preserve the employees’ free choice of the Union as their collective-bargaining representative. The passage of time involved in the Board’s administrative process in conjunction with Respondent’s unfair labor practices will only serve to weaken the Union’s standing with the employees and dilute employee support for the Union. *See NLRB v. Hardesty Co., Inc.*, 308 F.3d 859, 865 (8<sup>th</sup> Cir 2002)(“unilateral action will also often send the message to the employees that their union is ineffectual, impotent, and unable to effectively represent them”). If allowed to continue, Respondent’s actions could severely erode the “prestige and legitimacy” of the Union in the eyes of the employees. *Morio v. North American Soccer League*, 632 F.2d 217, 218 (2d Cir. 1980); *see also Asseo v. Pan American Grain Co., Inc.*, 805 F.2d 23, 26-27 (1<sup>st</sup> Cir. 1986) (“[e]mployee interest in a union can wane quickly as working conditions remain apparently unaffected by the union or collective bargaining”) and *Garcia v. Sacramento Coca-Cola Bottling Co.*, 733 F.Supp.2d 1201, 1216 (E.D.Ca 2010) (same), both quoting *I.U.O.E. v. NLRB (Tiidee Products, Inc.)*, 426 F.2d 1249 (D.C. Cir.), *cert. denied* 400 U.S. 950 (1970). Indeed, employee support for the

Union will begin to dissipate, as all unit employees hired by Respondent were deprived of the benefits of the collective-bargaining agreement, notably Respondent's unilateral elimination of their dental, life, and health insurance, reduction in wages, and loss of guaranteed work hours. By the time the Board issues its final bargaining order, it will be too late to protect employee choice and for the Union to regain its lost support. *See Bloedorn v. Francisco Foods, Inc.*, 276 F.3d at 299 (the longer a union "is kept from working on behalf of employees, the less likely it is to be able to organize and represent the employees effectively if and when the Board orders the company to commence bargaining").

The erosion of Union support resulting from Respondent's unilateral change will predictably diminish the Union's strength at the bargaining table. *See Small v. Avanti Health Systems, LLC*, 661 F.3d 1180, 1193 (9<sup>th</sup> Cir. 2011)("Once the union's support has diminished, it will likely suffer irreparable harm because 'with only limited support the Union will be unable to bargain effectively regardless of the ultimate relief granted by the Board'"); *I.U.O.E v. NLRB (Tiidee Products, Inc.)*, 426 F.2d at 1249 (employer "may continue to enjoy lower labor expenses after the order to bargain either because the union is gone or because it is too weak to bargain effectively"). Two formerly represented employees have either left Respondent's employ or been terminated and at least one considered leaving due to the Respondent's refusal to honor the terms and conditions of the Union contract.

Thus, the Union has already lost considerable support from the bargaining unit. Therefore, absent an interim bargaining order remedy, meaningful collective bargaining after a final Board decision will be impossible and the Board's final bargaining order will be a nullity. *See Chester v. Grane Healthcare Co.*, 666 F.3d at 102-03 (3d Cir. 2011)(interim bargaining order necessary because "an ultimate Board order that Grane recognize the Union may be ineffective if the Union has lost significant support"); *Moore-Duncan v. Horizon House Developmental Services*, 155 F.Supp.2d 390, 396-97 (E.D.Pa. 2001) (without employee support, a union has little leverage and "will be hard-pressed to secure improvements in wages and benefits at the bargaining table").

## **2. Interim Relief Will Not Harm Respondent.**

Respondent will suffer little harm if injunctive relief is granted. First, an interim bargaining order under Section 10(j) does not last forever. *See Seeler v. The Trading Port, Inc.*, 517 F.2d 33, 40 (2d Cir. 1975)("there is nothing permanent about any bargaining order particularly an interim order which will last only until the final Board decision"). The injunction will require Respondent to bargain in good faith, not compel it to reach agreement. There is no evidence that requiring Respondent to apply the former terms and conditions of employment to the unit employees will be overly burdensome. *See Eisenberg v. Suburban Transit Corp.*, 112 LRRM 2708, 2712-13 (D.N.J. 1983)(ordering rescission of unlawful mid-

contract unilateral changes even though order would cost respondent more than if it were allowed to continue its illegal actions pending the Board's final order; court "unimpressed" with respondent's claimed harm), *aff'd per curiam*, 720 F.2d 661 (3d Cir. 1983). Nor is there any evidence that application of the contract would jeopardize Respondent's overall business operation.

### **3. The Passage of Time Does Not Preclude Injunctive Relief.**

The propriety of injunctive relief is not diminished by the time elapsed since the filing of the Union's charge in November of 2014. Most of the delay was caused by Respondent's actions. The Region conducted a thorough investigation and needed documents that were in Respondent's possession to resolve the "successor" employer issue. Respondent refused to cooperate with the Region's requests for documents by providing partial and vague responses, necessitating the issuance of subpoenas. The Union amended its charge twice. After analyzing the documents the Region made a complaint determination. Settlement efforts were made and Respondent has not, until being informed of the Board's authorization to seek injunctive relief, replied to the Board's settlement efforts. No settlement between the parties has, as yet, been achieved.

In this case, the Petition seeking injunctive relief was filed within a reasonable period of time given Respondent's recalcitrance and the volume of documents to be reviewed. *See e.g., Pascarell v. Vibra Screw, Inc.*, 904 F.2d at 881

(the Board needs time to do a thorough investigation especially where the Respondent has engaged in a pattern of unlawful activity). Further, complaints of delay must be weighed against the public interest inherent in protecting the collective bargaining process. In this regard, courts have held that any delay by the Board in initiating Section 10(j) proceedings should not penalize the affected employees who have no control over the 10(j) process. *See e.g. Hoffman v. Cross Sound Ferry Serv., Inc.*, 109 LRRM 2884 (1982); *DeProspero v. House of Good Samaritan*, 474 F. Supp. 552, 557 (N.D.N.Y. 1978). Taking the above into consideration, courts in the Third Circuit have granted injunctive relief in cases where there has been as much as fourteen months delay prior to the according of relief. *Hirsch v. Dorsey Trailers, Inc.*, 147 F.3d 243, 248-249 (3d Cir. 1998); *Pascarell v. Gitano Group, Inc.*, 730 F. Supp. at 616 (thirteen months delay prior to the according of relief); *See also Pascarell v. Vibra Screw, Inc.*, 904 F.2d at 2463 (a six month delay is not unreasonable); *Pascarell v. Orit Corp./Sea Jet Trucking*, 705 F. Supp. at 205 (a five month delay is not unreasonable).

## **VII. CONCLUSION**

It is respectfully submitted that the evidence establishes that there is reasonable cause to believe that Respondent is a successor employer, legally required to recognize and bargain with the Union, that Respondent violated Section

8(a)(1) and (5) of the Act as alleged in the Petition, and that the injunctive relief sought is just and proper.

Dated at Newark, New Jersey, July 8<sup>th</sup>, 2015.

Respectfully submitted,

/s/ Bert Dice-Goldberg  
Bert Dice-Goldberg  
Counsel for Petitioner