

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHARTER COMMUNICATIONS, LLC

and

Cases 07-CA-140170

JONATHAN FRENCH

and

07-CA-145726

RAYMOND SCHOOF

and

07-CA-147521

JAMES DEBEAU

**ORDER<sup>1</sup>**

Respondent Charter Communications, LLC's Motion for Partial Summary Judgment is denied. The Respondent has failed to demonstrate that there are no genuine issues of material fact warranting a hearing and that it is entitled to judgment as a matter of law. This denial is without prejudice to the Respondent's right to renew its arguments to the administrative law judge and before the Board on any exceptions that may be filed to the judge's decision, if appropriate.<sup>2</sup>

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<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> The Respondent seeks summary judgment regarding certain complaint allegations that, on their face, appear to be untimely under Sec. 10(b) of the Act. Member Miscimarra agrees with the denial of Respondent's motion as stated in the Board's order, but he believes that the General Counsel's response to Respondent's argument that multiple allegations are time-barred is deficient because, apart from arguing the merits, the General Counsel makes a conclusory argument that summary judgment is inappropriate merely because the parties' respective positions "would be more fairly decided at a hearing where the above issues could be fully litigated, where witnesses may testify and be subject to cross examination, and an Administrative Law Judge can make a determination based on witness credibility and all evidence presented by both

Dated, Washington, D.C., April 26, 2016

MARK GASTON PEARCE,	CHAIRMAN
PHILIP A. MISCIMARRA,	MEMBER
KENT Y. HIROZAWA,	MEMBER

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parties.” Counsel for the General Counsel’s Opposition to Respondent’s Motion for Partial Summary Judgment, ¶ 13. As Member Miscimarra stated in *L’Hoist North America of Tennessee, Inc.*, 362 NLRB No. 110, slip op. at 3 (2015) (concurring), “in response to a motion for summary judgment, I believe the General Counsel at least must explain in reasonably concrete terms why a hearing is required. Under the standard that governs summary judgment determinations, this will normally require the General Counsel to identify material facts that are genuinely in dispute.” See also *Leukemia and Lymphoma Society*, 363 NLRB No. 124, slip op. at 2 (2016) (Member Miscimarra, dissenting). In the instant case, Member Miscimarra agrees with the denial of partial summary judgment because scrutiny of the parties’ pleadings reveals that genuine issues of material fact exist regarding whether the otherwise untimely allegations are closely related to the timely complaint allegations. See *Carney Hospital*, 350 NLRB 627, 630 (2007).