

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 4  
Case 04-RD-157892**

SANDRA L. TRANSUE (Petitioner)  
and

CPL (LINWOOD) LLC D/B/A  
LINWOOD CARE CENTER AND  
ITS SUCCESSOR  
201 NEW ROAD OPERATIONS, LLC  
D/B/A LINWOOD CARE CENTER (Employer)  
and

1199 SEIU UNITED HEALTHCARE WORKERS EAST (Union)

**EMPLOYER’S MOTION TO HOLD ST. GOBAIN HEARING**

Employer, by its attorneys, pursuant to Casehandling Manual Section 11730.3(c), submits this Motion for the Board to conduct a hearing in this matter, as required by Section 11730.3(c) and *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), to resolve any genuine issues of fact as to whether there is a causal nexus between alleged unfair labor practices and the filing of the decertification petition involved in this matter; and, in support of such relief states:

1. The Petition in this matter was filed on August 13, 2015.

2. On August 19, 2015, the Regional Director notified the parties that this matter would be held in abeyance pending the resolution of the ULP's in Cases 04-CA-146362, -146670 and -148705.
3. On February 10, 2016, the Board denied review of the August 19, 2015 decision.
4. A hearing was held in the referenced ULP cases on February 8-10, 2016.
5. During the pre-hearing proceedings in the related ULP cases Employer was advised by the ALJ at that time, after Employer indicated that two (2) weeks were needed for the hearing in order to cover the *Saint Gobain* taint issues, that the hearing on the ULP cases would not reach whether there was a causal nexus between the alleged ULP's and the filing of any decertification petition; that the *Saint Gobain* issue would be determined at a separate hearing; and, that putting on evidence on the taint issue would not be necessary during the ULP hearing.
6. There is a separate Petition involved in Case 04-RM-145463, filed on January 30, 2015, which was dismissed on May 14, 2015 by the Regional Director, as to which the Board denied review on February 17, 2016, but which dismissal is pending the resolution of reconsideration requests to Board, the last filed on June 10, 2016.

7. As a result of the pending RM and RD petitions, employees at Employer's nursing facility have been seeking to have the Board hold an election for them to express their free choice as to their representation for more than a year and a half without an election being held.
8. On April 5, 2016, the ALJ issued his decision, JD-27-16, in the related ULP cases and transferred the proceedings to the Board.
9. On May 2, 2016, the General Counsel filed Exceptions to the ALJ's Decision.
10. On May 3, 2016, Employer filed Exceptions to the ALJ's Decision.
11. To date, the Board has not issued a decision as to the filed Exceptions.
12. The ALJ's Decision includes a recommended order that Employer bargain in good faith with the Union until a CBA or impasse is reached.
13. Given that more than a majority of Employer's employees have expressed their desire to vote on Union representation in a new election, the determination of whether there is a causal nexus between the ULP's alleged and as shown before the ALJ and the RD Petition involved in this matter is both ripe and essential for the protection of the Employees' rights of self-determination under the NLRA. *See: Levitz Furniture of the Pacific, Inc.*, 333 NLRB 717, 720, 724 (2001) ("The Board has held that an employer violates Section 8(a)(2) by recognizing a union that

lacks majority support or by continuing to recognize an incumbent union that it knows has lost majority support.”) (“Under Board law, if a union actually has lost majority support, the employer must cease recognizing it, both to give effect to the employees’ free choice and to avoid violating Section 8(a)(2) by continuing to recognize a minority union.”).

14. While in *Levitz*, the Board, at FN1, adhered to its policy that employers may not withdraw recognition in a context of severe unremedied unfair labor practices tending to cause employees to become disaffected from the union, the Board in *Levitz* recognized that employee-initiated RD Petitions – such as that present in this case – present special circumstances that require protection of employee rights to self-determination guaranteed by the NLRA.
15. The Board has previously required some analysis of the extent to which pre-existing unfair labor practices actually taint or impair employee free choice. *See: Columbia Pictures Corporation*, 81 NLRB 1313 (1949) (finding special circumstances); *Maramont Corp.*, 317 NLRB 1035, 1036 (1995) (applying law of the case where the Board had previously determine there was no impairment); *see also: Master Slack Corp.*, 271 NLRB 78 (1984) (establishing test to evaluate causal connection between

unremedied ULPs and subsequent employee expression of dissatisfaction with a union); *St. Gobain Adhesives, Inc.*

16. Since the alleged ULP's giving rise to the Regional Director's determination to hold this Petition in abeyance occurred more than six months prior to the filing of this Petition and there was no evidence presented at the hearing on the ULP's indicating any nexus between the filing of this Petition and the alleged ULP's, the continuing delay of Employees' rights to self-determination in this matter is unjustified. *Compare: Ryan Iron Works, Inc. v. NLRB*, 257 F.3d 1, 13 (1<sup>st</sup> Cir. 2001) (Where Petition filed 4 weeks after ULP after employees returned from strike and 6 weeks after direct dealing ULP presented a "close question" of whether combined ULPs could reasonably be found to significantly contribute to loss of majority status in a withdrawal of recognition dispute).

WHEREFORE, Employer requests the Board to schedule the *Saint Gobain* hearing for this matter.

Respectfully submitted,

/s/ Louis J. Capozzi, Jr.  
Louis J. Capozzi, Jr., Esquire  
[Employer's Legal Representative]

DATE: JULY 28, 2016

## CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Section 102.21 of the Board's Rules and Regulations, a true and correct copy of this Motion to Dismiss in Part was served electronically sent to the email addresses of record noted below:

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/s/ Louis J. Capozzi, Jr.  
Louis J. Capozzi, Jr., Esquire  
Respondent's Legal Representative

DATE: JULY 28, 2016