

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TASTE OF THE WEST, LLC d/b/a
DQ GRILL & CHILL RESTAURANT

and

Case 10-CA-173203

KRISTI LEE MINOR

ORDER DENYING MOTION

The Respondent's Motion for Dismissal of the Complaint is denied. The Respondent has failed to establish that there are no genuine issues of material fact warranting a hearing and that it is entitled to judgment as a matter of law.¹

Dated, Washington, D.C., September 14, 2016

MARK GASTON PEARCE,	CHAIRMAN
PHILIP A. MISCIMARRA,	MEMBER
LAUREN McFERRAN,	MEMBER

¹ Member Miscimarra agrees with the denial of the Respondent's motion as stated in the Board's Order. 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 that 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 (which is the equivalent of a summary judgment proceeding) the General Counsel has provided a relatively sparse opposition to the Respondent's arguments, but he has still described, in reasonably concrete terms, why, based on material facts that are genuinely in dispute, a hearing is required.