

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS
BOARD REGION 4

DIVERSCO, INC., a wholly owned subsidiary of
ABM INDUSTRIES, INC.

and

BAKERY, CONFECTIONERY, TOBACCO
WORKERS AND GRAIN MILLERS LOCAL 492

CASE NO. 4-CA-177909

RESPONDENT DIVERSCO'S MOTION TO POSTPONE HEARING

Respondent Diversco hereby moves pursuant to Board Rule 102.16(b) and 102.24(a) to postpone the hearing in this matter from November 30, 2016 to a mutually agreed upon date in mid-December or early January. As grounds for this Motion to Postpone Hearing, Respondent states as follows:

1. Respondent has recently engaged new counsel, signatory below, who require additional time to prepare for trial in this case. Initial investigation by Respondent's new counsel into the facts of the case has led to assertion of an affirmative defense in the Answer that the alleged discriminatee was a statutory supervisor. In response to this defense, Counsel for the General Counsel has recently moved for a Bill of Particulars and issued an overbroad and burdensome subpoena. Compliance with these discovery requests will further limit Respondent's new counsel's ability to prepare for the hearing itself in the limited time available.

2. In addition to the foregoing, Respondent's new counsel is also serving as lead counsel in multi-party litigation challenging nationwide rules governing white collar overtime and reporting of injuries. *See Plano Chamber of Commerce v. Perez*, 16-cv-732 (E.D. TX.); and *TEXO ABC/AGC, Inc. v. Perez*, 16-cv-1998 (N.D. TX.). Both of the rules that are being challenged are scheduled to take effect on December 1, absent preliminary or permanent

injunctive relief. A hearing is being held in Texas in the *Plano* case on November 16, requiring travel and preparation. Supplemental briefing will be required during the following week, and a second hearing has tentatively been scheduled for November 28. A late November hearing is also anticipated in the *TEXO* case, which again deals with a challenged rule that will otherwise go into effect on December 1.

3. In addition to the foregoing, negotiations which could lead to settlement of all or a portion of the present complaint are in progress. Additional time is needed to allow the settlement discussions to be successfully concluded.

4. Respondent has not previously sought a postponement of the hearing date in this case.

5. Respondent's counsel has conferred with Counsel for the General Counsel regarding this motion. Counsel for the General Counsel has not consented to it.

6. Respondent's counsel is available for trial on the alternative dates of December 16 and/or December 19, 2016, and/or on such alternative dates during the last two weeks in December and/or the first week of January, 2017 that the parties may mutually agree to.

November 14, 2016

Respectfully submitted,

/s/Maurice Baskin

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Postpone Hearing were served on the following by email and/or U.S. mail this 14th day of November, 2016:

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/s/ Maurice Baskin

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