

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1 – SUBREGION 34

ZANE’S, INC.

and

LOCAL 919, UNITED FOOD &
COMMERCIAL WORKERS UNION,
AFL-CIO

Case Nos. 01-CA-179261
01-CA-167721
01-CA-181191

MOTION TO RESCHEDULE

Pursuant to 29 C.F.R. §§ 102.16 and 102.24, the Respondent, Zane’s Cycles (“Zane’s”), hereby requests that the hearing currently scheduled for December 15, 2016 be rescheduled.

I. **PROCEDURAL POSTURE**

This case involves the consolidation of three charges and multiple amendments thereto, including most recently on November 9, 2016. Below is a chronology of the relevant filings to date.

- On January 14, 2016, the Charging Party, Local 919, United Food & Commercial Workers Union, AFL-CIO, filed Charge 01-CA-167721.
- Zane’s submitted responses to Charge 01-CA-167721 on March 15, March 22, April 22, 2016.
- On June 2, 2016, Zane’s responded to a Subpoena *Duces Tecum* served by the NLRB.
- On June 30, 2016, the Charging filed Charge 01-CA-179261.
- On July 25, 2016, Zane’s responded to Charge 01-CA-179261.

- On July 29, 2016, Charge 01-CA-167721 was amended and Charge 01-CA-181191 was filed.
- On August 22, 2016, Zane's responded to Charge 01-CA-181191, which included a further respond to Charge 01-CA-167721.
- On August 31, 2016, the Charging Party amended Charge 01-CA-179261.
- On August 31, 2016, Charges 01-CA-167721, 01-CA-179261 and 01-CA-181191 were consolidated and the NLRB issued a Consolidated Complaint and Notice of Hearing.
- On September 29, 2016, Zane's filed an Answer to the Consolidated Complaint.
- On November 9, 2016, the Charging Party filed yet another amendment to Charge 01-CA-179621, setting forth a new allegation that "[o]n or about March 4, 2016, the above-named Employer imposed more onerous conditions of employment on employees because they engaged in union activity and because they filed charges and/or provided testimony under the Act."

II. REASON FOR MOTION

Good cause exists to reschedule the hearing. First, the hearing should be rescheduled on the ground that the Charging Party has filed another amended unfair labor practice charge that, if processed to complaint, may be appropriate for consolidation for a single hearing with the issues set forth in the current Consolidated Complaint. On November 9, 2016, the Charging Party filed a Second Amended Charge setting forth a new allegation that "[o]n or about March 4, 2016, the above-named Employer imposed more onerous conditions of employment on employees because they engaged in union activity and because they filed charges and/or provided testimony under the Act." Zane's is in the process of analyzing and investigating those new allegations and

preparing a position statement in response thereto. As the filing of the Second Amended Charge might be appropriate for consolidation with the pending Consolidated Complaint, the hearing scheduled for December 14, 2016 should be adjourned and rescheduled in the interests of administrative economy. A decision by the Region to amend the Consolidated Complaint to incorporate the new allegations will cause Zane's to be required to file an Answer to the Amended Complaint. Further, the possible addition of these new allegations as issues to be tried during this hearing will require both additional preparation and additional time during the hearing. In accordance with 29 C.F.R. § 102.16(a)(2), the filing of this new charge can justify extending the date of the hearing.

Second, the hearing should be rescheduled on the grounds that Respondent has exercised its right to retain new counsel to represent it at trial in the above captioned matter. Zane's was previously represented by the law firm of Wiggin & Dana LLP. On November 28, 2016, the undersigned firm of Goldberg Segalla LLP filed an Appearance on behalf of Zane's in lieu of the prior Appearance filed by Wiggin & Dana LLP. Respondent is entitled to representation by counsel of its choice, and absent any indication that substitution of counsel was undertaken solely as an abuse of process, the undersigned who has only been recently retained to represent Zane's, should be granted sufficient additional time to review the numerous filings to date, assess the status of the case, meet with potential witnesses, prepare for the hearing. The change of counsel has thus also created a need for additional time before proceeding with the hearing and, if appropriate, engage in settlement discussions. An adjournment of the hearing to allow Respondent's counsel of choice a reasonable opportunity to substitute for prior counsel and prepare for hearing is both reasonable and appropriate. A denial of an adjournment would be prejudicial to Zane's as it would punish Respondent for exercising its right to select new counsel.

Third, the hearing should be rescheduled to allow Respondent's new counsel to represent Zane's in possible settlement discussions with the General Counsel and the Charging Party. On information and belief, prior counsel for Zane's has had initial discussions with NLRB counsel regarding the possibility of settlement. However, the undersigned has not yet had the opportunity to explore the possibility of settlement. If fruitful, these discussions have the potential to lead to the settlement of all or a portion of the complaint, which would either eliminate the need for the hearing or significantly reduce the scope of the issues to be tried. In accordance with, 29 C.F.R. § 102.16(a)(3), ongoing settlement discussions can justify extending the date of the hearing.

Fourth, the hearing should be rescheduled in light of the likely request for injunctive relief. On information and belief, the NLRB authorized the pursuit of temporary injunctive relief pursuant to Section 10(j) of the National Labor Relations Act. Thus, it is likely that injunctive relief will be sought in federal court. Not only is the multiplicity of actions burdensome on the Respondent, but the outcome of those proceedings could affect these proceedings and/or the likelihood of settlement. Thus, the pursuit of injunctive relief has also created a need for additional time before proceeding with the hearing.

III. PREJUDICE

Zane's will be prejudiced if the hearing is not rescheduled. The prejudice will result from the undersigned being deprived of adequate time to prepare for the hearing, including the preparation of witnesses. This is further compounded by the recent filing of an amended charge to which Zane's has not yet had an opportunity to investigate or submit a response. Also, Zane's will be deprived of the opportunity to engage in any meaningful settlement discussions. Finally, it

will be forced to simultaneously litigate in two forums, in light of the likely pursuit of injunctive relief.

The Charging Party will not be prejudiced if the hearing is rescheduled. In light of the availability of make whole relief, no irreparable harm can result from such a minor delay. In addition, throughout the pendency of these charges, Zane's has continued to negotiate in good faith with the Charging Party. Thus, the lack of a resolution to these changes is not hindering the negotiating process.

IV. MISCELLANEOUS

Zane's is available to reschedule the hearing any day from February 20, 2017 to March 3, 2017, with the exception of February 24, 2017. J. William Gagne, Jr., counsel for the Charging Party, was contacted via e-mail and telephone for his position and did not receive a response as of the filing of this motion. John McGrath, for the General Counsel was contacted and opposes rescheduling the hearing.

WHEREFORE, for all of the foregoing reasons, the Respondent hereby requests that the hearing scheduled for December 15, 2016 be rescheduled.

Dated at Hartford, Connecticut this 28th day of November, 2016.



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CERTIFICATION

This is to certify that a copy of the foregoing has been e-mailed and mailed, as set forth below, this 28th day of November to:

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