

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

ZANE’S, INC.

and

**LOCAL 919, UNITED FOOD AND
COMMERCIAL WORKERS UNION,
AFL-CIO**

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

**COUNSEL FOR THE GENERAL COUNSEL’S
OPPOSITION TO RESPONDENT’S MOTION TO RESCHEDULE**

On November 28, 2016, Zane’s, Inc. (“Respondent”) filed a Motion to Reschedule (the “Motion”), in which it requested that the hearing in this matter be rescheduled from December 14, 2016, to a date between February 20 and March 3, 2017. Counsel for the General Counsel opposes the Motion on several grounds.

First, the Consolidated Complaint and Notice of Hearing in this matter (the “Complaint”) issued on August 31, 2016. At the time it issued, the Complaint stated that this hearing would open on December 14, 2016. That date was selected in consultation with Respondent and in order to accommodate Respondent’s stated availability at the time.

Second, this case concerns initial contract bargaining. The Complaint alleges, *inter alia*, that Respondent failed to bargain in good faith with Local 919, the United Food and Commercial Workers Union, AFL-CIO (the “Union”). Specifically, the Union has been attempting, in vain, to negotiate an initial collective-bargaining agreement with Respondent since it was certified in September 2015. The Complaint further alleges

that, in January 2016, Respondent terminated and subsequently failed to recall three employees. Thus, those employees have already been waiting nearly a year for their reinstatement. A two or three month delay in these proceedings would further undermine the collective-bargaining process and prejudice the discriminatees awaiting relief. In the Motion, Respondent argues that the Board's recent authorization of 10(j) injunctive relief has "created a need for additional time before proceeding with the hearing." (Mot. at 4.) To the contrary, the Board's 10(j) authorization reveals the real risk of remedial failure posed if this case is not promptly litigated before the Administrative Law Judge.

Third, Respondent asserts that it needs additional time to prepare for the hearing following a change in counsel, and that proceeding with this hearing on December 14, 2016 will "punish Respondent for exercising its right to select new counsel." (Mot. at 3.) This simply is not the case. Respondent has been aware of this pending trial date since August of 2016, and has had ample time since then to change counsel, if desired. Respondent has been represented for over the past year by competent labor counsel, but has decided to hire new counsel and seek postponement of these proceedings at the last minute. Neither the General Counsel, nor the Union nor the discriminatees named in the Complaint should be held liable for the timing of Respondent's sudden change of representation.

Fourth, contrary to Respondent's assertion in its Motion, the recently filed allegation (in Charge No. 01-CA-179261) alleges that conduct presently alleged in the Complaint to violate § 8(a)(3) also violated § 8(a)(4). With respect to that conduct, Respondent provided a detailed position statement to the Region on July 25, 2016, in

which it explained its reasons for reexamining the documents presented by employees during the I-9 process. To the extent that Respondent wishes to provide additional evidence to the Region to consider in evaluating whether the § 8(a)(4) allegation has merit, Respondent has been given an opportunity to provide a response prior to the opening of this hearing. If Respondent chooses to submit additional evidence in this regard, the Region will have sufficient time to evaluate that evidence prior to the hearing.

Finally, Respondent has raised the prospect of settlement discussions as a reason to postpone this hearing. While Counsel for the General Counsel is always interested in pursuing settlement discussions, we are aware of no reason why such discussions would be incompatible with opening this hearing as scheduled.

Accordingly, we respectfully request that the Motion be denied.

Respectfully Submitted

/s/ John A. McGrath

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DATED at Hartford, Connecticut this 29th day of November, 2016.

CERTIFICATE OF SERVICE

The undersigned hereby certifies the aforesaid Opposition to Motion to Reschedule was caused to be served on November 29, 2016, in the manner set forth below:

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