

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ART, INC.

and

Case 18-CA-168725

**UNITED FOOD & COMMERCIAL
WORKERS, LOCAL 653**

GLEN LAKE'S MARKET, LLC

and

Case 18-CA-168726

**UNITED FOOD & COMMERCIAL
WORKERS, LOCAL 653**

THOMAS B. WARTMAN

and

Case 18-CA-168727

**UNITED FOOD & COMMERCIAL
WORKERS, LOCAL 653**

THOMAS W. WARTMAN

and

Case 18-CA-168728

**UNITED FOOD & COMMERCIAL
WORKERS, LOCAL 653**

VICTORIA'S MARKET, LLC

and

Case 18-CA-168729

**UNITED FOOD & COMMERCIAL
WORKERS, LOCAL 653**

ORDER

The Respondents' Motion for Summary Judgment is denied. This denial is without prejudice to the Respondent's right to renew its arguments to the administrative law judge and to raise the issues before the Board on any exceptions that may be filed to the judge's decision, if appropriate.¹

Dated, Washington, D.C., January 31, 2017.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

¹ Acting Chairman Miscimarra agrees with the denial of the Respondents' motion as stated in the Board's Order. As he stated in *L'Hoist North America of Tennessee, Inc.*, 362 NLRB No. 110, slip op. at 3 (2015) (concurring), "[I]n 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 & Lymphoma Society*, 363 NLRB No. 124, slip op. at 2 (2016) (then-Member Miscimarra, dissenting). In the instant case, the General Counsel has described, in reasonably concrete terms, why, based on material facts that are genuinely in dispute, a hearing is required.