

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

**THE WESTSIDE CENTER FOR
INDEPENDENT LIVING, INC.**

and

**ASSOCIATION OF PROFESSIONAL
DISABLED SERVICE EMPLOYEES**

**Cases 31-CA-158111, 31-CA-161753,
31-CA-161758, 31-CA-163430,
31-CA-166232, 31-CA-169080,
31-CA-169895, 31-CA-169896,
31-CA-170521, 31-CA-172432,
31-CA-174591, 31-CA-175306,
31-CA-176442, 31-CA-178044,
31-CA-178834, 31-CA-181181,
31-CA-181345, 31-CA-187839,
31-CA-187841, 31-CA-188276,
31-CA-188277, 31-CA-189715,
31-CA-190659, 31-CA-191859,
31-CA-192535, 31-CA-192552,
31-CA-192553, 31-CA-196544,
31-CA-196547**

and

ROSA MARIA CHATURVEDI, an Individual.

ORDER GRANTING GENERAL COUNSEL’S MOTION TO POSTPONE 9/12/17 HEARING

On May 31, 2017, the Regional Director for Region 31 issued a Consolidated Complaint and Notice of Hearing in this matter. Hearing was postponed from July 24 to September 12, 2017 on Respondent’s request.

On August 28, 2017, the General Counsel filed a motion to postpone hearing (the Motion) and requests that the Division of Judges postpone the instant hearing until October 30, 2017 because the Counsel for the General Counsel is unavailable earlier in October due to prescheduled vacation. The arguments put forth in support of the motion are twofold:

1. Counsel for the General Counsel expects to receive the Board’s decision on whether it will authorize instituting Section 10(j) proceedings toward the end of the week of September 4 or the week of September 11, 2017, which will be days before or overlapping with the currently scheduled September 12, 2017 unfair labor practice (“ULP”) hearing date. If the Board decides to authorize instituting Section 10(j) proceedings at that time, both Counsel for the General Counsel and counsel for Respondent The Westside Center for Independent Living, Inc. d/b/a Westside Center for Independent Living (“Respondent”) will need to spend a

significant amount of time and effort focusing on the Section 10(j) proceedings, including filing in District Court during the first week of the ULP hearing and replying to the Section 10(j) petition and other motions while the ULP hearing is ongoing; and

2. [W]ithin the last two weeks, the parties have made substantial progress towards reaching settlement. Prior settlement discussions were not successful because the parties essentially could not agree regarding the issue of reinstatement of certain discriminatees. However, the parties have recently been in regular communication and moving towards resolving their differences. Postponing the hearing for a short period of time will allow the parties to continue their settlement discussions and have a meaningful opportunity to reach a mutually beneficial resolution while saving all parties precious resources. Charging Party Rosa Maria Chaturvedi and Respondent both join this motion for the reasons set forth above. The other Charging Party, the Association of Professional Disabled Service Employees (“Union”), opposes this motion for the reasons set forth below in its email to Counsel for the General Counsel:

“1. The matter was originally set for an expediated trial on July 24, 2017. Continuing this trial will cause an undue hardship upon the Labor Union and especially discriminatees. Four employees have been without income and benefits since the Region authorized complaint with respect to the first discriminatee on or about June 2016 and it is well over a year and half since the termination of ' of the discriminatee from his employment and a year or more for the other three discriminatees

2. The Collective Bargaining Agent has lost substantial support because of the prolonged nature of the time between the first charges authorized for complaint on or about January 2016 and the present date, August 25, 2017. In other words after more at least forty-five Unfair Labor Practices have issued by the Region there is no relief for individual discriminatee and or the Collective Bargaining Agent. The majority of employees do not have any expectation of relief, given the more than a year and a half that has elapsed since the first charges were authorized for complaint.

3. Because of the SUBSTANTIAL delay in prosecuting the Unfair Labor Practice Charges the Employer has become more recalcitrant and likely to commit Unfair Labor Practices unabated and their is has been no consequences to their actions.

4. Employees are less likely to report Unfair Labor Practices to the Collective Bargaining Agent because their is belief that the violations shall not be prosecuted and the collective bargaining members are correct, since finding that forty-five Unfair Labor Practice Charges have issued there has been no prosecution or remedial action to date. Many of the discriminatees are disabled and without their insurance and medical coverage without relief, in fact Mr. Michaelson's health insurance shall also run in November 2017.

5. There is NO COLLECTIVE BARGAINING AGREEMENT REACHED AT THIS TIME and putting this matter off ANOTHER TWO MONTHS shall only embolden the Employer's intention to avert its collective bargaining obligations which it has done since the Association was certified in March of 2015.

6. The Union's resources and cohesion has deteriorated as this matter has dragged on and on without any remedy and most of the bargaining team does believe this matter shall be resolved because of the time that has elapsed since the first charges issued many months ago. Most recently the Employer's Counsel walked out of a collective bargaining session that was mediated by the FMCS and refused to provide any type of counter-offer ect date for future bargaining or a date when the Employer's offer would be furnished to the Association - postponing this trial YET again, making it SIX months since the Region issued complaint eviscerates cue process, support for the Union - members do not believe that this matter shall be resolved given the delay in prosecution and the Employer shall continue and has continued to engage in Unfair Labor Practices because there is no consequence for their actions and employees are frightened to reach out to the labor union or assistance because the labor union has no CBA with a grievance process because of the intransience of the employer and the Region has not prosecuted over forty-five ULP's. To this end, without a trial setting soon as set, this is the second rescheduling the Association of Professional Disabled Service Employees is rendered superfluous and impotent because the labor organization cannot enforce any constraint through labor law or upon the Employer that has established based on the complaint egregious violations of labor law that shall continue unabated if this matter is continued a second time.

In summary, justice delay is justice denied.” (Exh. 1 to the Motion.)

On August 29, 2017, I issued an Order to Show Cause (“OSC”) giving the parties until Noon today, to file a response as to why I should not grant the Motion.

Also on August 29, 2017, Respondent filed a joinder to the Motion which provides that Counsel for the Charged Party is unavailable earlier in October than the 30th due to a prescheduled trial, unrelated to this proceeding, and Respondent concludes in agreement with the Motion that a short continuance of hearing would facilitate the bargaining process.

On August 30, 2017, the Charging Party Union filed its opposition to the Motion (CP Opposition) which raises the same points contained above in its earlier email correspondence to the General Counsel.

I find that good cause exists to grant a short trial postponement to October 30, 2017 in this case in light of the fact that this is an unusual situation where the General Counsel, the Respondent, and the individual Charging Party all agree that the short trial postponement to October 30, 2017 is appropriate in these extraordinary circumstances so the parties can best utilize their resources with respect to the expected Section 10(j) proceeding and settlement negotiations. Also the General Counsel, who has the primary responsibility for prosecuting cases before the NLRB, has discretion to determine the appropriate hearing schedule. See *B.F. Goodrich*, 113 NLRB 152 (1955), enfd. *sub nom*, *UAW v. NLRB*, 231 F. 2d 237 (7th Cir. 1956), cert. denied 352 U.S. 908 (GC controls the prosecution of ULP cases.)

ORDER

For the reasons stated above:

IT IS ORDERED that the General Counsel's Motion to Postpone Hearing is **GRANTED** and the September 12, 2017 hearing shall be **POSTPONED to October 30, 2017 at 9:00 a.m., at the same location in West Los Angeles, California, as previously noticed, and on consecutive days thereafter until completion.**

Date: September 1, 2017, San Francisco, California.



Associate Chief
Administrative Law Judge

Served by email upon the following:

For the NLRB:

Simone Pang Gancayco, Esq., Email: simone.gancayco@nlrb.gov
Carlos Gonzalez, Esq. Email: carlos.gonzalez@nlrb.gov

For the Respondent:

Jim McMullen, Esq., Email: jmcullen@gordonrees.com
Joe Sbuttoni, Esq., Email: jsbuttoni@gordonrees.com

For the Charging Party:

Jeff Michaelson, President
Assoc. Professional Disabled Service Employees
Email: jeffmichaelson@hotmail.com