

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

NEW HUDSON FACADES, LLC

and

**Cases 04-CA-201420
04-CA-202224
04-CA-203073 and
04-CA-204648**

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 542**

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION TO EXTEND THE HEARING DATE**

On October 13, 2017, the Regional Director of Region Four of the National Labor Relations Board issued a Consolidated Complaint and Notice of Hearing (the Complaint) alleging, in part, that Respondent violated Section 8(a)(3) of the Act by discharging three of its employees, who were lead Union adherents, three days after the representation petition was filed. Because this is a case in which the Region seeks injunctive relief, the Complaint scheduled the hearing to commence on November 15, 2017. On October 27, 2017, Respondent filed a Motion to Extend Hearing Date that listed the following grounds in support of its request: (1) that Respondent only received formal notice on October 26, 2017, that the Region was consolidating the unfair labor practice charges that are the subject of the Complaint with the eleven (11) objections and thirty-three (33) challenges in the related representation Case 04-RC-201002; and (2) Respondent's belief that the proceedings could take up to 8 days to litigate the instant case potentially overlapping with the Thanksgiving holiday.

Respondent's Motion to Extend the Hearing Date should be denied for the following reasons:

First, the Respondent's position that the addition of the objections and challenges to the unfair labor practice cases warrants extending the hearing date is insufficient grounds to warrant postponement. Since July 2017, Respondent has been aware of the challenges and objections as well as the unfair labor practices in this matter, and, as Respondent was aware, or should have been aware, it is standard practice pursuant to Sections 102.33(c) and 102.72(c) of the Rules and Regulations of the National Labor Relations Board (the Board), for the Regional Director to consolidate related unfair labor practice and representation cases. See also Case Handling Manual Sections 11420.1 and 11716. Furthermore, in early October 2017 during settlement discussions as well as a conference call on October 18, 2017, the Region verbally notified Respondent that the challenges and objections were to be consolidated with the Complaint. As noted in Case Handling Manual Sections 11365.3 and 11395.4, "postelection matters are to be resolved with the utmost dispatch" and "[p]ostponements of postelection hearings should not be granted, absent good cause."

Second, Respondent's assertion that the hearing may last up to eight days is purely speculative. Counsel for General Counsel estimates that the hearing will at most take five days and will be concluded prior to Thanksgiving. Eight of the 11 objections mirror conduct alleged in the Complaint and would not add any additional time to the hearing. Counsel for the General Counsel anticipates that the hearing on the Complaint allegations should not take more than 2 days. Although there are 33 challenged ballots, some of those can be resolved without the need for additional testimony. For example, the challenges involving the three discriminatees would be resolved based on the resolution of the Complaint allegations involving their discharges.

Moreover, there are 15 challenges that involve four employee classifications—machine programmers, purchasing clerks and plant clericals—which should not require testimony from each individual employee. Furthermore, it is certainly possible that some of the challenges could be resolved by stipulation obviating the need for testimony. Additionally, even if the hearing lasts for a full week to Tuesday November 21, 2017, it will still close in plenty of time prior to the Thanksgiving holiday.

Finally, Counsel for the General Counsel opposes postponing the hearing due to the high priority of the unfair labor practices alleged in the Complaint. The allegations in the Complaint involve the discharge of lead employee organizers at the start of an organizing drive by the Charging Party Union. As a result of the discharges, the Union organizing campaign stalled. In view of the impact of Respondent's conduct on employees' exercise of their Section 7 rights, the Region is requesting authorization from the Board to seek injunctive relief pursuant to Section 10(j) of the Act. Postponing the hearing for a minimum of two months or more as requested by Respondent will impact any 10(j) proceedings which may be authorized as an Administrative Law Judge's timely decision can either support or undercut the allegations raised in such a petition. Moreover, as there is no guarantee that suitable dates in the middle of January 2018 will be available or that the witnesses will not have conflicting obligations, any postponement will risk serious delay in having this case heard.

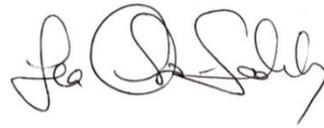
In short, the parties are available on the scheduled date of November 15 and Respondent cites no conflict during the six workdays prior to the Thanksgiving holiday or any conflicts during the week following Thanksgiving. Even in the unlikely event that Respondent's unduly pessimistic predictions about the length of the hearing prove to be correct, there would be

sufficient time to complete the hearing during that time period. And this is a high priority case in which a postponement could have a significant deleterious impact on employee Section 7 rights.

For the foregoing reasons, Counsel for the General Counsel requests that the hearing not be postponed and that Respondent's Motion be denied.

SIGNED at Philadelphia, PA, this 30th day of October, 2017

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lea F. Alvo-Sadiky". The signature is written in a cursive style with a large, prominent "O" in the middle.

LEA F. ALVO-SADIKY
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**AFFIDAVIT OF SERVICE OF: COUNSEL FOR THE GENERAL COUNSEL'S
OPPOSITION TO RESPONDENT MOTION TO EXTEND THE HEARING DATE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on October 30, 2017, I served the above-entitled document by e-mail upon the following persons, addressed to them at the following addresses:

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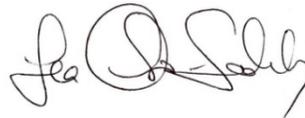
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October 30, 2017

Date

Lea F. Alvo-Sadiky
Designated Agent of NLRB

Name



Signature