

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

**NISSAN NORTH AMERICA, INC.**

**and**

**Case 10-CA-198732**

**MARTIN R. THOMAS**

**ORDER<sup>1</sup>**

The Respondent's Motion to Dismiss the complaint is denied. The Respondent has not demonstrated that the complaint fails to state a claim upon which relief can be granted and that it is entitled to judgment as a matter of law. Further, the Respondent's alternative Motion for a Bill of Particulars is not properly before the Board and has been transferred to the Division of Judges for consideration.<sup>2</sup>

---

<sup>1</sup> The National Labor Relations Board has delegated its authority in this matter to a three-member panel. Member Emanuel took no part in the consideration of this case.

<sup>2</sup> Sec. 102.24(a) of the Board's Rules and Regulations provides that prehearing motions other than motions for default judgment, summary judgment, or dismissal must be filed with the Board's Division of Judges.

In addition, we reject the General Counsel's arguments that the Respondents' motions were untimely filed. Sec. 102.24(b) of the Board's Rules states that "motions for summary judgment or dismissal . . . must be filed with the Board no later than 28 days prior to the scheduled hearing." In this proceeding, the hearing is scheduled for December 18, 2017, and therefore the Respondent's motion to dismiss, filed on September 8, 2017, is timely under the governing Board Rule. In addition, the Board's Rules do not provide a timeframe within which other prehearing motions must be filed, and therefore the motion for a bill of particulars is not untimely under the Board's Rules.

Although the General Counsel argued that the motions were untimely under the Federal Rules of Civil Procedure (FRCP), it is well established that "the Federal Rules of Civil Procedure are applicable to Board proceedings only with respect to the introduction of evidence and not with respect to pleadings before the Board." *Armstrong Cork Co.*, 112 NLRB 1420, 1421 (1955). See also *Component Bar Products*, 364 NLRB No. 140, slip op. at 10 (2016) ("Board proceedings are governed by the Administrative Procedures Act and the Board's Rules and Regulations, not the FRCP.")

Dated, Washington, D.C., November 16, 2017

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

MARVIN E. KAPLAN, MEMBER