

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

SCHNELLECKE LOGISTICS ALABAMA, LLC

and

DONALD EDWIN BUSSEY III, AN INDIVIDUAL **Case 10-CA-199183**

and

LASHOAN THOMAS, AN INDIVIDUAL **Case 10-CA-199732**

and

INTERNATIONAL UNION, UNITED **Cases 10-CA-201235**
AUTOMOBILE, AEROSPACE AND **10-CA-205320**
AGRICULTURAL IMPLEMENT WORKERS OF **10-CA-207265**
AMERICA (UAW), REGION 8

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

The General Counsel submits this opposition to the request to extend hearing date filed by Respondent Schnellecke Logistics Alabama, LLC. Respondent moves to extend the hearing until the week of February 26, 2017. For the reasons set out below, Respondent's request to extend hearing date should be denied.

PROCEDURAL HISTORY

This case involves Respondent's attempts to defeat a union organizing campaign by terminating the lead employee union activist; by terminating a union supporter; by engaging in widespread unlawful threats, interrogations, solicitation of grievances; and by giving employees the impression of surveillance of their union activities. Regional Director John D. Doyle, Jr., issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on October 25, 2017. Respondents filed an answer on November 8, 2017. Their twenty-first affirmative

defense claims that the administrative law judge before whom the case will be tried was not appointed in conformity with the Constitution's Appointments Clause.

On November 24, 2017, the Board authorized the Regional Director to initiate 10(j) proceedings in this case. The Regional Director issued a second consolidated complaint adding cases 10-CA-205320 and 10-CA-207265 that same day.

Respondent filed a motion to dismiss and a motion to stay proceedings pending outcome of its motion to dismiss with the Board on November 13, 2017, and before the Division of Judges on November 22, 2017. A hearing is scheduled for December 11, 2017.

ARGUMENT

I. RESPONDENT HAS CITED NO GROUNDS SUFFICIENT TO WARRANT POSTPONING THE HEARING DATE

Respondent argues that its request to extend hearing date should be granted because a) one of its attorneys, Marcel Debruge, is scheduled to undergo a medical procedure sometime in December; b) the Region issued a second consolidated complaint on November 24, 2017, giving Respondent insufficient time to prepare its defenses; c) Respondent's Motion to Dismiss is pending before the Board; and d) Respondent claims it has other obligations that conflict with the scheduled hearing date. As further explained below, Respondent is represented by numerous attorneys; Respondent has been aware of the allegations against it for at least six weeks prior to the scheduled hearing date; the Board has ordered hearings to proceed when similar motions to dismiss have been filed; and Respondent has cited no conflicts which would justify a postponement of the scheduled hearing date. Thus, Respondent has failed to demonstrate sufficient grounds for postponing the hearing in this matter, and its motion should be denied.

i. Respondent is represented by numerous attorneys, and Mr. Debruge's scheduled medical procedure does not warrant extending the hearing date.

Respondent argues that the hearing date should be extended because one of its attorneys, Marcel Debruge, is scheduled to have a medical procedure performed in December 2017. Respondent is represented by the law firm of Burr & Forman, LLP, a law firm of over 300 attorneys. Burr & Forman, "Legal Professionals", URL: <http://www.burr.com/legal-professionals> (November 27, 2017). In addition to Mr. Debruge, two other Burr & Forman attorneys have filed Notices of Appearance in this matter. See Attached Exhibit A.

As Respondent is represented by numerous attorneys and a law firm comprised of over 300 attorneys, Mr. Debruge's scheduled medical procedure does not warrant extending the hearing date, and the request should be denied.

ii. Respondent has been on notice of the allegations against it long enough to prepare its defenses.

The underlying charges giving rise to this matter were originally filed on May 22, 2017; May 31, 2017; June 26, 2017; August 30, 2017; and October 3, 2017, respectively. Respondent's counsel has represented Respondent in this matter throughout the investigative process of each of these charges. Thus, Respondent has been on notice of all of the allegations in this matter since at least two months prior to the scheduled hearing. Further, the initial Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on October 25, 2017, more than six weeks before the scheduled hearing date.

Therefore, Respondent's argument that it has not had sufficient notice of the allegations against it is disingenuous, and Respondent's request should be denied.

iii. The Board has ordered hearings to proceed when similar motions have been filed.

In *WestRock Services, Inc.*, Case No. 10-CA-195617, the employer filed a Motion to Dismiss alleging that (i) the judge is an inferior officer under the Appointments Clause of the United States Constitution, and (ii) the Board is not a Head of Department with authority to validly appoint the judge pursuant to the Appointments Clause. In directing that hearing to proceed, the letter of the Deputy Executive Secretary to the parties stated:

The Board has decided to take the Respondent's Motion to Dismiss under advisement; and pending the Board's further consideration and resolution of the Respondent's Motion, the parties and the judge are directed to conduct the hearing that is scheduled to commence on November 15, 2017 and to comply with the Board's normal post-hearing procedures, which shall be without prejudice to the position of the Respondent and other parties in relation to the Respondent's Motion to Dismiss.

Rothschild, Roxanne L., Dep. Ex. Sec., *WestRock Services, Inc.*, Case No. 10-CA-195617 (letter to parties dated November 15, 2017).

As the Motion to Dismiss filed in this case argues grounds identical to those argued in *WestRock Services, Inc.*, the Administrative Law Judge should order the hearing to proceed and deny the request to extend the hearing date.

iv. Respondent has cited no conflicts which warrant a postponement of the hearing in this matter.

In further support of its request to extend the hearing date, Respondent contends that the hearing conflicts with its business interests due to limited production the week of November 20 through 24, 2017, and because Respondent's counsel has hearings scheduled for January 24, 2018, and January 30, 2018. However, none of these dates conflict with the scheduled hearing date of December 11, 2017. Therefore, Respondent does not have any conflict that warrants a postponement of the hearing.

As explained above, Respondent has failed to establish sufficient reasons for postponing the hearing in this matter, and its request to extend the hearing date should be denied.

II. A POSTPONEMENT WOULD FRUSTRATE THE REMEDIAL PURPOSES OF THE ACT

On November 24, 2017, the Board authorized the Regional Director to pursue 10(j) injunctive relief in this matter because, inter alia, injunctive relief is necessary to prevent irreparable harm to employees' statutory rights and to protect the remedial purposes of the Act.

Congress has declared that "encouraging the practice and procedure of collective bargaining" is "the policy of the United States..." 29 U.S.C. §151. Employees have the right to decide whether they wish "to bargain collectively through representatives of their own choosing..." 29 U.S.C. §157. If the lawful status quo is not fully restored in a timely manner, Respondent's actions will inflict irreparable harm to the national labor policy encouraging collective bargaining embodied in §1 of the Act, the employees' right to organize under §7 of the Act, and the efficacy of the Board's ultimate remedial order. Grant of Respondent's motion to stay will allow Respondent to forever profit from its illegal conduct.

Employees' organizing efforts are in jeopardy unless Respondent is timely ordered to reinstate the employees whom it unlawfully discharged. Grant of the stay would send an inescapable message to Respondent's remaining employees: engaging in organizing activity, including attending Union meetings, will cost them their jobs and neither the Board nor the Union can provide a timely remedy.

Indeed, Respondent's illegal discharges are already having a chilling effect on the organizing campaign, and Respondent's significant unlawful conduct has had the cumulative effect of successfully dissipating employee support for the Union.

For these reasons, the Region is moving expeditiously to hearing and is preparing to file its petition in the federal district court seeking an interim injunction under Section 10(j) of the Act compelling Respondent to reinstate the lead employee union activist and to cease and desist from its threats, interrogations, and other conduct that has demonstrably chilled employee exercise of their Section 7 rights. If Respondent’s motion to stay is granted, the harm to the organizational effort will not be effectively remedied. The remedial order could come years after the discharges – too late to erase their chilling effect and revive the campaign. *See Pye*, 238 F.3d at 75 (“a long time may pass before the Board decides the merits of this case ... the disappearance of the ‘spark to unionize’ may be an irreparable injury...”). By that time, the remaining employees will have observed that workers who “attempted to exercise rights protected by the Act had been discharged” and waited for “years to have their rights vindicated.” In those circumstances, no worker “in his right mind” will “participate in a union campaign... .” In fact, by that point, the terminated employees will likely have moved on to other jobs and will not be available to accept a Board order of reinstatement.¹ The fact that these original Union supporters “will likely never return to work ... may itself cause irreparable injury to the unionization effort... .” *Pye*, 238 F.3d at 75. The Board’s order will be rendered an “empty formality.” If the stay in proceedings is granted, Respondent, by violating the Act and delaying these proceedings, will have prevented the employees from exercising their §7 right to freely decide whether to be represented by the Union.

¹ See generally Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 Harv. L. Rev. 1769, 1792-93 (1983) (studies show significant decline in proportion of discriminatees accepting reinstatement when offered more than six months after discriminatory act), cited with approval in *Kobell v. Suburban Lines, Inc.*, 731 F.2d at 1094 & n.32.

Thus, denying Respondent's motion to stay is necessary to protect employees' §7 rights, preserve the remedial power of the Board, effectuate the will of Congress, and prevent manifest injustice.

Respectfully submitted this 27th day of November, 2017,

/s Joseph W. Webb
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Counsel for the General Counsel's Opposition to Respondent's Request to Extend Hearing Date by electronic transmission on this date to:

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November 27, 2017