

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

NEXTEER AUTOMOTIVE CORP.)	
)	
and)	
)	Case No. 07-CA-215036
LOCAL 699, INTERNATIONAL UNION,)	
UNITED AUTOMOBILE, AEROSPACE)	
AND AGRICULTURAL IMPLEMENT)	
WORKERS OF AMERICA (UAW), AFL-CIO)	

**MOTION FOR RECONSIDERATION AND FOR A STAY OF PROCEEDINGS
PENDING THE DISPOSITION OF *GENERAL MOTORS, LLC*, 368 NLRB NO. 68 (2019)**

Pursuant to NLRB Rules and Regulations § 102.48(c)(1) and (3), Respondent Nexteer Automotive Corp. moves the Board to reconsider its August 27, 2019, Decision and Order in this case and to stay further proceedings until the Board has had the opportunity in *General Motors, LLC*, 368 NLRB No. 68 (2019) to address the appropriate standard to be applied to misconduct occurring in the course of otherwise protected union activity.

The Administrative Law Judge in the instant case gave the four-factor test from *Atlantic Steel*, 245 NLRB 814, 816 (1979) rigid application and placed heavy reliance on the decisions in *Plaza Auto Center*, 360 NLRB 972 (2014) and *Pier Sixty, LLC*, 362 NLRB 505 (2015), both of which the Board has specifically indicated a desire to revisit. Should the Board conclude in *General Motors* that there are circumstances under which the “nature of the employee’s outburst” factor should be dispositive as to loss of statutory protection, regardless of the remaining *Atlantic Steel* factors, it would be appropriate to evaluate the circumstances of the instant case under the new standard, whatever it might be, or even to refer this dispute back to the Administrative Law Judge for further fact finding. Such a reevaluation would be consistent with the Board’s “usual practice to apply new policies and standards retroactively ‘to all pending cases in whatever stage.’”

SNE Enterprises, 344 NLRB 673, 673 (2005) (quoting *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1006-1007 (1958)). See also *MV Transportation, Inc.*, 368 NLRB No. 66 at page 12 (2019).

By this Motion, Respondent also requests that further proceedings be stayed pending the decision in *General Motors* and that a schedule of subsequent briefing be set following the decision in *General Motors* to address the ramifications of that decision on this case.

A brief in support accompanies this Motion.

Respectfully submitted,

By: /s/ Kim F. Ebert
OGLETREE, DEAKINS, NASH,
SMOAK AND STEWART, P.C.

Kim F. Ebert, Esquire
Sarah M. Rain, Esquire
111 Monument Circle, Suite 4600
Indianapolis, IN 46204
317.916.1300 (phone)
317.916.9076 (fax)

Counsel for Respondent

Dated: September 18, 2019

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

NEXTEER AUTOMOTIVE CORP.,

Respondent,

and

Case No. 07-CA-215036

**LOCAL 699, INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO,**

Charging Party.

CERTIFICATE OF SERVICE

I do hereby certify that on September 18, 2019, a true and correct copy of the foregoing Brief was *Electronically Filed* on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the foregoing Brief has been served by electronic mail this 18th day of September, 2019 on: Stuart Shoup at SShoup@uaw.net and Scott Preston at scott.preston@nlrb.gov.

By: /s/ Kim F. Ebert
Counsel for Nexteer Automotive Corp.

39964196.1