

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL ASSOCIATION OF HEAT AND
FROST INSULATORS AND ASBESTOS WORKERS,
(HFIA) AFL-CIO, LOCAL UNION NO. 50

and

Case 09-CB-239346

ALLOYD INSULATION CO., INC.

and

Case 25-CB-239416

ADVANCED ENERGY PROTECTION, LLC

and

Case 09-CB-240443

PEDERSEN INSULATION CO.

**COUNSEL FOR THE GENERAL COUNSEL'S RESPONSE TO THE BOARD'S
NOTICE TO SHOW CAUSE ORDER**

I. Introduction

On September 10, 2019,^{1/} the International Association of Heat and Frost Insulators and Asbestos Workers, (HFIA) AFL-CIO, Local Union No. 50 (Respondent) filed with the National Labor Relations Board (Board) a motion for summary judgment requesting that the instant complaint be dismissed. On September 24, Counsel for the General Counsel filed a response to Respondent's motion for summary judgment. Thereafter, the Board issued a notice to show cause Order on October 21, inviting any party to file a written response seeking to show why Respondent's motion for summary judgment should not be granted. As will be discussed in more detail below, these cases involve genuine issues of material fact at every turn, and as such, Respondent's motion for summary judgment must fail.

^{1/} Hereinafter all dates occurred in 2019, unless otherwise noted.

I. Genuine Issues of Material Fact Exist, and a Hearing in This Matter is Necessary

1. The alleged discriminatees' Section 8(b)(1)(B) duties.

Respondent cannot credibly assert that Jim Perrault, David Hines, and James Petrides did not engage in Section 8(b)(1)(B) duties, i.e. acting as one of their respective employer's collective bargaining and/or grievance adjustment representatives. Respondent acknowledges that Jim Perrault has acted in a supervisory capacity with Charging Party Pederson Insulation Co. (Charging Party Pederson). (R. Mot., p. 5) ^{2/} Indeed, the evidence will show that Perrault is Charging Party Pederson's operations manager/superintendent. Respondent further admits that Perrault was directly involved in negotiating the parties' latest collective-bargaining agreement in 2018. *Id.* at p. 13. Additionally, Counsel for the General Counsel intends to show at the hearing that Perrault, acting in his capacity as the operations manager/superintendent, actively communicates with Respondent regarding the parties' contractual hiring hall provision, is involved in the termination of bargaining unit employees, and has repeatedly been involved in the adjustment of grievances arising from conflicts between bargaining unit employees and jobsite supervisors.

Moreover, David Hines is the superintendent of Charging Party Alloyd Insulation Co., Inc. (Charging Party Alloyd) As Respondent admitted, Hines was initially present for collective-bargaining negotiations with Respondent in 2018. (R. Mot., p. 4) Additionally, the undersigned intends to adduce evidence at the hearing that will show Hines, as Charging Party Alloyd's superintendent, routinely was involved in the adjustment of workplace grievances that arose between bargaining unit members and Charging Party Alloyd. Indeed, Respondent's Business Manager Dan Poteet, in a sworn affidavit provided during the investigation of these cases,

^{2/} References to Respondent's motion for summary judgment will be noted as: (R. Mot., p. ____)

admittedly called Hines to discuss a workplace dispute that was raised by bargaining unit employees to the Union. The evidence will further show that Hines had other occasions to meet with Respondent representatives to discuss workplace grievances in attempt to resolve those disputes.

Likewise, James Petrides also engaged in Section 8(b)(1)(B)-related duties on behalf of Advanced Energy Protection, LLC (Charging Party Advanced). At the hearing, the evidence will show that Petrides, in his role as the president of Charging Party Advanced, has engaged in both labor negotiations and grievance adjustment. While Advanced is not a signatory to the multi-employer collective-bargaining agreement with Respondent, Respondent knows full-well that Respondent and Charging Party Advanced experienced a heated, and contested labor dispute in about September 2018. In that regard, Poteet admitted in his sworn affidavit that in September 2018, Respondent and Charging Party Advanced encountered a portability dispute, i.e. a dispute about whether Charging Party Advanced could bring employees – members of a different Local – into Respondent’s jurisdiction to perform work. Respondent’s collective-bargaining agreement contains portability language and restrictions. Poteet admits that he resolved the contractual issue with Petrides, further evidence that Petrides not only engages in Section 8(b)(1)(B) duties, but did so on behalf of Charging Party Advanced in a dispute with Respondent, irrespective of whether Charging Party Advanced is a signatory to Respondent’s collective-bargaining agreement. ^{3/}

^{3/} As evidenced by the instant complaint, the General Counsel does not allege that Darrell Gleadell possessed and/or engaged in Section 8(b)(1)(B)-related duties. However, as discussed below, Gleadell was collateral damage, caught-up in Respondent’s unlawful conduct.

2. Respondent's decision to no longer allow the named discriminatees to work in their respective positions and collect their pension benefits directly relates to their Section 8(b)(1)(B) duties.

To the extent that the complaint may be unclear, the General Counsel is alleging that Respondent made the decision to no longer allow Perrault, Hines, Petrides, and Gleadell the ability to collect pension benefits and continue to work in their respective positions of employment directly as a result of, and on the heels of, labor disputes between Poteet and Hines and Petrides. ^{4/} The evidence that will be presented at hearing, through admissions by Poteet and other testimonial evidence, will show that immediately preceding Respondent's unlawful conduct, Poteet had labor and contractual-related disputes with Charging Party Advanced (Petrides) and Charging Party Alloyd (Hines). In each instance, both Petrides and Hines were engaged in Section 8(b)(1)(B) duties on behalf of their respective employers.

Both workplace disputes were tense and revolved around contractual disagreements and bargaining unit employees' workplace job performance. In fact, Poteet's dispute with Petrides left Poteet so angered that he admittedly declared, to several different individuals, "f*** Jim Petrides I am tired of him and all these guys doing whatever the f*** they want and its not going to happen any f***** more." Furthermore, the evidence will also show that Poteet's dispute with Hines centered around the work being performed by bargaining unit employees on a particular job. Hines took the position that the Employer expected the work of bargaining unit employees to be performed in a particular manner, and Poteet took the position that if bargaining

^{4/} The General Counsel's Complaint alleges that Perrault, Hines, and Petrides engaged in Section 8(b)(1)(B) duties, that Respondent took action that restrained and coerced those individuals (as well as Gleadell), and that Respondent's coercion and restraint violates Section 8(b)(1)(B). While the General Counsel believes it has sufficiently pled the involved allegations to warrant a hearing and defeat Respondent's summary judgment motion, should the Board find that genuine issues of material fact exist such that a hearing is warranted as it, respectfully, should, the General Counsel intends to issue an amended complaint to explicitly allege that Respondent's unlawful actions were retaliation for behavior that occurred while the respective representatives were engaged in Section 8(b)(1)(B) duties.

unit employees are instructed to perform inferior work, the Union would contest any terminations as a result of that work.

Finally, evidence will be offered at hearing to show that it was Poteet's labor disputes with Hines and Petrides, and the positions they took as their respective employer's Section 8(b)(1)(B) representative, that ultimately led to Respondent's decision to no longer allow Hines, Petrides, Perrault, and Gleadell to collect their pension benefits and work in their respective positions of employment. Testimonial evidence will be introduced showing that Poteet made very clear that his decision to no longer permit the alleged discriminatees from collecting their pension benefits and continuing in their current employment positions was tied to his frustration with the labor-related positions they took on behalf of their employers, and his desire to no longer have to work with them in those roles. The evidence will also show that Poteet was admittedly very much aware that he could not prohibit Hines and Petrides from working in their respective positions and collect their pension benefits while allowing others to do so. Thus, to the extent that Perrault and Gleadell were either not embroiled in a labor dispute with Respondent, or in the case of Gleadell, not an alleged Section 8(b)(1)(B) representative for Charging Party Alloyd, they were unfortunately collateral damage. ^{5/}

III. Genuine Issues of Material Fact Necessitate an Administrative Hearing Being Held

It is well settled that in ruling on a motion to dismiss, "the Board construes the complaint in a light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." *Detroit Newspapers*, 330 NLRB 524 at fn. 7 (2000). In order to

^{5/} In other contexts, the Board has made clear that unlawful actions of a charged party directed towards particular individuals can violate the statutory rights of otherwise uninvolved discriminatees as those individuals get swept up as collateral damage. See *Advanced Masonry Associates, LLC*, 366 NLRB No. 57, slip op. at 2 (2018), citing *Adam Wholesalers*, 322 NLRB 313, 314 fn. 7, 329-330 (1996).

support a motion for summary judgment, Respondent must show an absence of genuine issues of material fact. *Regency Grande Nursing & Rehabilitation Center*, 347 NLRB 1143 (2006).

Genuine issues of material fact exist for each element that the General Counsel must prove in this proceeding. The parties disagree on whether Hines, Perrault, and Petrides were engaged in Section 8(b)(1)(B) duties on behalf of their respective employers, and the General Counsel will present evidence to substantiate those allegations. Moreover, the General Counsel *does* allege that it was the Section 8(b)(1)(B) duties of certain of the named discriminatees that caused Respondent to no longer permit Hines, Perrault, Petrides, and Gleadell to both work for their respective employers and continue to collect their pension benefits, allegations that Respondent disputes. Again, as discussed above, the General Counsel will present evidence to substantiate those allegations.

IV. Conclusion

Respondent's motion for summary judgment has failed to show an absence of genuine issues of material fact. Consequently, and for the foregoing reasons, Respondent's motion for summary judgment must be dismissed.

Dated: October 31, 2019

Respectfully submitted,

/s/ Daniel A. Goode

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CERTIFICATE OF SERVICE

October 31, 2019

I hereby certify that I served Counsel for the General Counsel's Response to the Board's Notice to Show Cause Order on this date on the following parties by electronic mail.

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Respectfully submitted,

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