



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
US Court House, Spring Street
312 N Spring Street, 10th Floor
Los Angeles, CA 90012

Agency Website: www.nlr.gov
Telephone: (619) 821-3329
Fax: (619) 557-6358

March 6, 2020

Warren L. Nelson, Attorney at Law
Fisher & Phillips LLP
Email: wnelson@fisherphillips.com

John P. Boggs, Attorney at Law
Fine, Boggs & Perkins LLP
Email: jboggs@employerlawyers.com

Re: Int'l Assoc. of Machinists and Aerospace
Workers Local Lodge No. 1484, District
Lodge 190
(Lexus of San Diego)
Case 21-CB-256136

Dear Mr. Nelson and Mr. Boggs:

We have carefully investigated and considered your charge that International Association of Machinists and Aerospace Workers Local Lodge No. 1484, District Lodge 190 (Union) has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

The charge alleges the Union, by its organizer/agent, violated the Act, by trespassing onto the Employer's property, refusing to leave, and subjecting an Employer manager (witnessed by employees) to a barrage of profane, harassing, and intimidating language, threats, and related messages.

As an initial matter, the Employer's arguments regarding this Union representative's alleged *past* behavior, at other workplaces, is not probative evidence as to whether the conduct at issue involving this Employer is an unfair labor practice.

Next, and as to the relevant conduct, which involved a confrontation between the Union representative and an Employer manager in the presence of employees, while it appears that the Union representative made threats to engage in Section 7 activity or other lawful economic action, the evidence fails to establish that the Union representative engaged in or made any specific threats of violence, or that he otherwise engaged in conduct that restrained or coerced employees in the exercise of their Section 7 rights. The evidence also reflects that the confrontation was of a limited duration; that the Union representative left the property within minutes; and that the Union representative has not since attempted to come back on the Employer's property in the same manner. Although the Union representative is alleged to have

been loud, rude, insulting, and profane during this confrontation, such conduct, and notably in light of the other considerations above, is insufficient to establish an 8(b)(1)(A) violation.

Finally, the Employer's arguments regarding the subjective reactions of certain employees to the conduct at issue are not controlling, as the Board, in evaluating whether conduct rises to the level of being coercive and unlawful, applies an objective standard.

Charging Party's Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at www.nlrb.gov. See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at www.nlrb.gov. If you require additional assistance with E-Filing, please contact E-File@NLRB.gov).

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **March 20, 2020**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than March 19, 2020. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before March 20, 2020**. The request may be filed electronically through the *E-File Documents* link on our website www.nlrb.gov, by fax to (202) 273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after March 20, 2020, **even if it is postmarked**

Int'l Assoc. of Machinists and Aerospace
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or given to the delivery service before the due date. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Sincerely,



Nathan Seidman
Acting Regional Director

Enclosure

cc: Eric Leys, General Manager
Lexus San Diego
Email: eleys@penskeautomotive.com

Caren P. Sencer, Attorney at Law
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NS/cw

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Int'l Assoc. of Machinists and Aerospace Workers Local Lodge No. 1484
District Lodge 190

Case Name(s).

21-CB-256136

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)