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Cc: [Bock, Richard](#); [Szapiro, Miriam](#); [Dodds, Amy L.](#); [Compton, Kayce R.](#); [Shorter, LaDonna](#)
Subject: McGrath Mazda, Case 13-CA-255817 (case closing email)
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The Region submitted this case for advice as to whether the putative successor-employer (“Employer”) had hired a substantial and representative complement of employees at the time the Union demanded recognition. We conclude that at the time of the Union’s demand, the Employer was not engaged in substantially normal operations and, by the time it was, the Union no longer represented a majority of employees. Accordingly, the charge should be dismissed, absent withdrawal.

A successor employer inherits the bargaining obligation of its predecessor where there is substantial continuity between the enterprises and where a majority of its employees in an appropriate unit were employed by the predecessor. *NLRB v. Burns Int’l Sec. Servs., Inc.*, 406 U.S. 272, 281 (1972); *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 41, 43 (1987). The successor employer’s obligation to recognize the union attaches when the union demands recognition or bargaining and the successor employer employs a “substantial and representative complement” of employees, a majority of whom were employed by the predecessor. *See Fall River Dyeing*, 482 U.S. at 47–53; *Hampton Lumber Mills-Washington*, 334 NLRB 195, 195 (2001). A substantial and representative complement of employees is found to exist at the point when an employer’s job classifications are substantially filled, its operations are in substantially normal production, and it does not reasonably expect to increase the number of unit employees. *Ride Right, LLC*, 366 NLRB No. 16, slip op. at 2 (Feb. 8, 2018) (citing *Fall River Dyeing*, 482 U.S. at 49).

Here, it was generally known that the predecessor-employer employed seven technicians in its shop. Accordingly, when the Employer began operations in mid-December 2019 with only three predecessor technicians, its operations had not yet reached “substantially normal production.” *Id.*, slip op. at 2. Further, because the Employer was noticeably understaffed, the Union could reasonably expect the Employer would hire additional employees, which it did a few weeks later. When the Employer hired four new employees in mid-January 2020, thus bringing its operations up to substantially normal production, the Union no longer represented a majority of employees and the Employer had no obligation to recognize or bargain with the Union. Accordingly, the charge should be dismissed, absent withdrawal.

This email closes this case in Advice as of today. Please feel free to contact us with any questions or concerns.

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