

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
AT CINCINNATI**

Matthew T. Denholm, Regional Director)
of the Ninth Region of the National Labor)
Relations Board, for and on behalf of the)
NATIONAL LABOR RELATIONS BOARD)

Petitioner)

v.)

Civil No. 1:20-CV-560

OHIO LOGISTICS, AFFILIATED WITH)
FINDLAY'S TALL TIMBERS)
DISTRIBUTION CENTER, LLC)

Respondent)

**MEMORANDUM IN SUPPORT OF PETITIONER'S
MOTION TO EXPEDITE**

I. Posture of the Case

This proceeding is before the Court on a petition filed on July 17, 2020, by petitioner, the Regional Director for Region 9 of the National Labor Relations Board, herein called the Board, pursuant to Section 10(j) of the National Labor Relations Act, as amended [61 Stat. 149; 73 Stat. 544; 29 U.S.C. § 160(j)], herein called the Act, for a temporary injunction pending final disposition before the Board on charges filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, herein called the Union. The charges allege that Ohio Logistics, Affiliated with Findlay's Tall Timbers distribution Center, LLC, herein called respondent, has been engaging in unfair labor practices within the meaning of Section 8(a)(1)(3) and (5) of the Act [29 U.S.C. § 158(a)(1), (3) and (5)]. The petition is predicated upon the petitioner's determination that there is reasonable cause to believe that respondent has engaged in the unfair labor practices charged and that injunctive relief is necessary in order to effectuate the purposes of the Act.

In furtherance of the need for an expedited ruling in this matter, petitioner requested in its petition that the Court issue an order directing respondent to promptly file an answer to all

allegations of its petition and to appear before the Court and show cause why the relief prayed for in the petition should not be granted. Absent such expedited treatment by the Court, respondent would have 60 days to file an answer to the petition. Federal Rules of Civil Procedure § 12(a)(1)(A)(ii). Petitioner respectfully submits that the amount of time allowed under Rule 12 is inconsistent with the priority that should normally be accorded to the type of relief sought in the petition.

II. An Expedited Decision is Warranted in This Matter:

The instant petition warrants expedited treatment. Until 1984, Section 10(i) of the Act provided that “petitions filed under [the NLRB should] be heard expeditiously, and if possible, within 10 days after they have been docketed.” Public Law 98-620. The Federal Courts Civil Priorities Act (FCCPA) repealed Section 10(i) of the Act and other such priority statutes and replaced them with a uniform provision, 28 U.S.C. § 1657(a), which requires the courts to “. . . expedite the consideration of . . . any action for temporary or preliminary injunctive relief.” Therefore, based upon the priorities established by the FCCPA, this matter warrants expedited treatment. See also *Kaynard v. MMIC, Inc.*, 734 F.2d 950, 954 (2d Cir. 1984) (Congress intended Section 10(j) as a “swift interim remedy to halt unfair labor practices”); *Hoerber v. IBEW Local No. 3*, 498 F.Supp. 122, 125 (D.N.J. 1980) (while district court has authority to refer 10(j) petition to a magistrate, Court remained cognizant of statutory priority and mandated expedited processing). Moreover, any further delay only increases the on-going risk of irreparable harm to the Union, the discriminatee and the public interest. See *Maram v. Universidad Interamericana*, 722 F.2d 953, 960 (1st Cir. 1983) (even if passage of time while the case is pending before the Court may “diminish the curative effect of the relief,” an interim injunction would still be more effective to restore the status quo than the Board’s ultimate order without interim relief). Cf. *NLRB v. Mastro Plastics Corp.*, 354 F.2d 170, 181 (2d Cir. 1965), cert. denied, 384 U.S. 972 (1966) (“remedial action must be speedy in order to be effective”).

In addition, the Courts have recognized that the very nature of 10(j) and 10(1) cases qualifies them for expedited treatment independent of the statutory provisions for expedition. In *Fuchs v. Hood Industries, Inc.*, 590 F.2d 395, 397 (1st Cir. 1979), for example, the First Circuit held that a 10(j) or a 10(1) petition must be granted priority status not solely as a result of the mandate of Section 10(j) of the Act, but because the very nature of these proceedings dictates expeditious judicial consideration. The Court held in *Fuchs* that it was an abuse of judicial discretion for a District Court to refuse to consider the merits of a 10(j) petition until after the issuance of an Administrative Law Judge's Decision in the underlying administrative proceeding. The Court concluded:

The injunctive relief provided for in Section 10(j) is interlocutory in nature; it is designed to fill the considerable gap between the filing of the complaint by the Board and the issuance of its final decision . . . By declining even to review the petition before the administrative law judge renders his decision, . . . the court in effect summarily denied the petition for the duration of much of its useful life. 590 F.2d at 397.

With specific reference to Section 10(1) cases, the courts have similarly concluded that the enumerated violations require prompt judicial relief to avoid obstructions to the free flow of commerce and to prevent violators of the Act from carrying out their unlawful objectives before the Board can act. See, e.g. *Hirsch v. BCTC of Philadelphia*, 530 F.2d 298, 302 (3rd Cir. 1976); *Henderson v. the I.U.O.E., Local 701*, 420 F.2d 802, 808-809 (9th Cir. 1969); *Squillacote v. Graphic Arts International Union (GAIU), Local 277*, 513 F.2d 1017, 1023 (7th Cir. 1975). Thus, "judicially created priority" with respect to petitions filed pursuant to Section 10(j) or 10(1) of the Act, has been recognized. The legislative history of the FCCPA makes it clear that it was not intended to eliminate or discourage the continuation of judicially created priorities which experience has shown are warranted. Sec. 130 Cong. Rec. No. 129, S. 12930 (daily ed. October 3, 1984) (remarks of Sen. Leahy and Sen. Dole).

Based on the foregoing, there are two bases upon which to expedite the decision in this matter, the statutory mandate of the FCCPA and the judicially created priority. Petitioner,

therefore, respectfully requests that the Court expedite this matter and issue an order directing respondent to file an answer to all allegations of the petition as soon as reasonably possible.

Dated at Cincinnati, Ohio this 31st day of July, 2020.

Respectfully submitted,

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