

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

**FCA US LLC**

Respondent Employer

and

**SHERI ANOLICK, an Individual**

**Case 07-CA-213717**

Charging Party Anolick

and

**BEVERLY SWANIGAN, an Individual**

**Case 07-CA-213746**

Charging Party Swanigan

and

**BRIAN KELLER, an Individual**

**Case 07-CA-213748**

Charging Party Keller

**-AND-**

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

Respondent Union

and

**SHERI ANOLICK, an Individual**

**Case 07-CB-213726**

Charging Party Anolick

and

**BEVERLY SWANIGAN, an Individual**

**Case 07-CB-213747**

Charging Party Swanigan

and

**BRIAN KELLER, an Individual**

**Case 07-CB-213749**

Charging Party Keller

## **GENERAL COUNSEL'S OPPOSITION TO RESPONDENT UNION'S MOTION TO DISMISS COMPLAINT**

Pursuant to Section 102.24(b) of the Board's Rules and Regulations Counsel for the General Counsel (General Counsel) respectfully files this opposition to Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (Respondent Union) Motion to Dismiss Complaint (Motion) filed on July 27, 2020.<sup>1</sup> The General Counsel has sufficiently pleaded claims supporting violations of the Act and has presented genuine issues of material fact which preclude Respondent Union's Motion.

### **I. BACKGROUND**

On February 19, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) issued alleging, in pertinent part, that during contract negotiations, Respondent Employer by its agents, gave assistance and support to Respondent Union in order to obtain benefits, concessions, and advantages for Respondent Employer in the negotiation, implementation, and administration of the collective bargaining agreement, in violation of Sections 8(a)(1) and 8(a)(2) of the Act. The Complaint further alleged that Respondent Union by its agents, received assistance and support from Respondent Employer, in violation of Section 8(b)(1)(A) of the Act. On June 18, an Amended Consolidated Complaint and Notice of Hearing (Amended Complaint) issued modifying some aspects of the Complaint including by adding additional alleged agents and clarifying some of the allegations including the applicable collective-bargaining agreements.

On March 4, Respondent Union filed its Answer to the Complaint (Answer) denying the commission of any unfair labor practices. On March 13, Respondent Employer filed a Motion to

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<sup>1</sup> All dates refer to calendar year 2020, unless otherwise noted. The Motion was initially sent to Region Seven, but was re-routed at Respondent Union's request on August 4.

Dismiss, asserting that the Complaint should be dismissed because the allegations are time-barred under Section 10(b) of the Act. In support of this assertion, Respondent Employer provided the following exhibits: 1) a document titled Chronology of News Reports and Other Information Available to the Charging Parties Prior to July 29, 2017; 2) a class action complaint filed by the Charging Parties on January 26, 2018; 3) the Charging Parties' response to a motion to dismiss the civil suit filed on July 10, 2018; 4) a July 26, 2017, press release from the United States Attorney's Office Eastern District of Michigan regarding the charging of a former Respondent Employer executive and a wife of a former Respondent Union Vice President; 5) a First Superseding Indictment dated July 26, 2017, but which does not disclose the filing date; 6) a document labeled Overlap Between NLRB Charges and Allegations in *Swanigan v. FCA US LLC*, No. 18-cv-10319 (E.D. Mich.); 7) a document dated July 26, 2017 labeled Letter Regarding DOJ Investigation; 8) a July 27, 2017 email from Respondent Employer CEO Sergio Marchionne. On May 5, the Board denied Respondent Employer's Motion to Dismiss, finding "no merit in the Respondent's contentions that the Board lacks jurisdiction over this matter under Section 10(b) of the Act."

On July 27, Respondent Union filed the instant Motion, asserting that the above-captioned charges were served more than six months after the Charging Parties admittedly had knowledge of their claims, in contravention of the requirements of Section 10(b) of the Act. Respondent Union claims that the correct date for starting the Section 10(b) period is July 26, 2017, when the Charging Parties assertedly knew facts creating a suspicion sufficient to warrant requiring them to file their unfair labor practice charges, but failed to serve Respondent Union until January 29, 2018. In support of this assertion, Respondent Union asserts that on July 26, 2017, the United States Attorney's Office for the Eastern District of Michigan unsealed the

indictment of Alphons Iacobelli (Iacobelli) and issued a press release outlining the charges. Further, on the same date, Respondent Union posted a letter to its membership disclosing the allegations against Respondent Union and Respondent Employer. Further, according to Respondent Union, in a civil lawsuit, the Charging Parties conceded that they were made aware of the facts underlying the charges on July 26, 2018 (sic) when the U.S. Attorney's office made the announcement. Because the Charging Parties did not file and serve their charges on Respondent Union until January 29, 2018, their charges are untimely.

## II. ARGUMENT

### Respondent's Motion to Dismiss Lacks Merit.

Section 10(b) of the Act bars complaint based on an unfair labor practice occurring more than six months prior to a properly filed charge. However, the Section 10(b) period does not begin to run until "the aggrieved party knows or should know that his statutory rights have been violated." [\*John Morrell & Co.\*](#), 304 NLRB 896, 899 (1991), *review denied*, 998 F.2d 7 (D.C. Cir. 1993) (unpublished decision). Notice of the violation must be "clear and unequivocal," but it can be actual or constructive. [\*St. Barnabas Medical Center\*](#), 343 NLRB 1125, 1126 (2004). A charging party has constructive knowledge of a violation when it is "on notice of facts that reasonably engendered suspicion that an unfair labor practice had occurred." *See, e.g.*, [\*Amalgamated Transit Union Local 1433\*](#), 335 NLRB 1263, 1263 n.2 (2001). Knowledge of the violation is imputed to the charging party "where it could have discovered the alleged misconduct through the exercise of reasonable diligence." *St. Barnabas Medical Center*, 343 NLRB at 1126-27. The party asserting a Section 10(b) defense has the burden of showing such notice. *Id.* at 1127.

Here, Respondent Union argues that the Charging Parties had actual or constructive notice of a bribery scheme on July 26, 2017, the day that the Iacobelli indictment was unsealed a press release outlining the charges was issued, and that Respondent Union posted a letter to its membership disclosing the allegations against Union officials and Respondent Employer executives.<sup>2</sup> It further claims that the Charging Parties conceded that they were made aware of the facts underlying the charges on July 26, 2018 (sic) in the pleadings of their civil lawsuit.

However, it was not until the public release of Iacobelli's plea agreement was filed on January 22, 2018, that evidence emerged establishing that the corruption constituted unfair labor practices. In his plea agreement, Iacobelli pleaded that the *purpose* of the bribes was to give Respondent Employer an advantage in bargaining and contract negotiation, and this admission is critical to the determination that the concealed payments violated Section 8(a)(1) of the Act. Without knowing the underlying purpose, it was impossible for the Charging Parties or the General Counsel to determine whether the payments constituted unlawful interference with employees' representation, unlawful assistance, or was in furtherance of some goal unrelated to the Act, (for example, hush money to cover up a safety concern with Respondent Employer's vehicles). Cf. *Leach Corp.*, 312 NLRB 990, 991 (1993) (where, in a case involving the transfer of employees from one facility to another, the Board began the running of the 10(b) period only upon completion of the transfer process—the earliest point at which the Union in the case could have had clear and unequivocal notice of a violation), *enforced*, 54 F.3d 802 (D.C. Cir. 1995).

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<sup>2</sup> Further undercutting Respondent Union's Motion is that it references a website version of the letter <https://uaw.org/letter-regarding-doj-investigation/> which does not admit any of the underlying facts upon which the Charging Parties could have relied upon to form the basis of a charge. Moreover, the letter refers only to actions of persons associated with Respondent Employer and the UAW-Chrysler National Training Center, and not any actions by Respondent Union.

Thus, even considering the fact that two of the Charging Parties filed charges prior to the release of Iacobelli's plea, which does not appear to be alleged in the Motion, is of no consequence because the July 2017, indictments merely raised a suspicion of corruption; they did not suggest that any particular unfair labor practices had been committed. Furthermore, Iacobelli's plea agreement also made clear that Respondent Employer transferred money directly into Respondent Union's coffers, purportedly as UAW-Chrysler Skill Development and Training Program d/b/a UAW-Chrysler National Training Center (NTC) salary reimbursements. Prior to this admission, there was no evidence available to the Charging Parties or the General Counsel that Respondent Employer unlawfully assisted Respondent Union by making concealed payments directly to the Respondent Union as an organization. These pieces of information, which did not come to light until January 2018, when Iacobelli's plea agreement was filed in the criminal court docket, made a critical difference in the determination that the charges were meritorious. Cf. [\*Morgan's Holiday Markets\*](#), 333 NLRB 837, 837, 841 (2001) (subsequently discovered evidence supporting existence of alter-ego relationship that came to light after charge was dismissed did not toll 10(b) period because there was adequate evidence available at the time of dismissal). Thus, the 10(b) period did not begin until at least January 22, 2018, placing the charges well within the statute of limitations.

The evidence presented at hearing will establish that Respondent Union has violated Section 8(b)(1)(A) of the Act as alleged. Notwithstanding the number of exhibits which may affect an Administrative Law Judge's decision, there likely remains some disputes which will turn on the credibility of witnesses, and can which only be resolved by an Administrative Law Judge after a full hearing of the evidence submitted by the parties. Consequently, Respondent Union's Motion should be denied.

### III. CONCLUSION

As discussed, Respondent Union's motion to dismiss is without merit. Based on the foregoing, in addition to the reasons relied upon by the Board in denying Respondent Employer's Motion to Dismiss on May 5, the General Counsel respectfully requests Respondent Union's Motion be denied.

Dated at Detroit, Michigan, this 12<sup>th</sup> day of August 2020.

/s/ Larry A. Smith

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
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**AFFIDAVIT OF SERVICE OF: COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION  
TO RESPONDENT UNION'S MOTION TO DISMISS COMPLAINT, dated August 12, 2020** by e-  
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Office of Executive Secretary/Board

I further certify that on August 12, 2020, I served the above by **electronic mail** or **facsimile** upon the following persons:

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August 12, 2020

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Date

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Signature