

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

**FAA CONCORD T, INC., DBA  
CONCORD TOYOTA**

**and**

**Case 32-CA-264162**

**MACHINISTS AUTOMOTIVE  
TRADES DISTRICT LODGE NO. 190,  
MACHINISTS LOCAL 1173**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S REPLY TO  
RESPONDENTS RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE**

Pursuant to the terms of the Board's Notice to Show Cause issued on January 8, 2021 in the above-captioned matter, Counsel for the Acting General Counsel files this Reply to Respondent's Response to the Board's Notice to Show Cause filed on January 22, 2021 (Respondent's Response or Response).

In its Response, Respondent does not argue that summary judgment is inappropriate under the circumstances of this case and does not raise any factual issues that are in dispute. Instead, Respondent concedes that its defenses to this unfair labor practice proceeding are based entirely on its election objections and related legal arguments that have already been raised and litigated in the prior related representation proceeding. Established Board law holds that a party may not relitigate in an unfair labor practice proceeding representation issues that were, or could have been, litigated in a prior representation proceeding. *See e.g., Delek Refining, Ltd.*, 363 NLRB No. 41 (2015), enfd. mem. 668 Fed. Appx. 594 (5th Cir. 2016); *Keco Indus., Inc.*, 191 NLRB 257 (1971), enfd. 458 F.2d 1356 (6th Cir. 1972). Therefore, Respondent's arguments should not preclude summary judgment in this case.

However, in light of the cases cited by Respondent and the fact that the underlying representation proceeding involved an *Armour-Globe* self-determination election, Counsel for the Acting General Counsel hereby withdraws its request that the Board order a remedy in this case extending the certification year pursuant to the Board's decision in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). See *Winkie Mfg. Co.*, 338 NLRB 787, 788 fn. 3 (2003), *affd.* 348 F.3d 254 (7th Cir. 2003); *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997) (citing cases).

In conclusion, based on the facts and law presented in the January 6, 2021 Motion for Summary Judgment, and for the reasons set forth above, Counsel for the Acting General Counsel respectfully requests that the Board grant the Motion for Summary Judgment, find that the Respondent has violated and is violating Section 8(a)(5) and (1) of the Act as alleged, and award the requested relief, as amended above, and all other relief that the Board deems just and proper.

**DATED AT** Oakland, California this 27<sup>th</sup> day of January 2021.

Respectfully submitted,

/s/ Amy Berbower

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BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**FAA CONCORD T, INC., DBA CONCORD TOYOTA**

**and**

**MACHINISTS AUTOMOTIVE TRADES DISTRICT  
LODGE NO. 190, MACHINISTS LOCAL 1173**

**Case 32-CA-264162**

**Date: January 27, 2021**

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE ACTING GENERAL COUNSEL'S  
REPLY TO RESPONDENTS RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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January 27, 2021

Date

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/s/ Ida Lam