

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL UNION NO. 150, A/W  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, AFL-CIO

and

Case 25-CC-228342

LIPPERT COMPONENTS, INC.

MOTION OF THE ACTING GENERAL COUNSEL  
TO THE NATIONAL LABOR RELATIONS BOARD  
TO REMAND THE COMPLAINT TO THE REGIONAL DIRECTOR FOR DISMISSAL  
OR, ALTERNATIVELY, TO DISMISS THE COMPLAINT

Pursuant to Section 102.24 of the Board's Rules and Regulations, Counsel for the Acting General Counsel hereby submits this Motion and urges the Board to Remand the Complaint to the Regional Director so that she may withdraw the Complaint in the above case and dismiss the charge, as the Acting General Counsel has determined that further prosecution of the Complaint undermines current Board law and is not in the public interest. Alternatively, the Acting General Counsel moves the Board to dismiss the Complaint.

The Region issued Complaint in this matter on December 31, 2018 and an Amended Complaint on February 7, 2019 alleging that Operating Engineers Local Union No. 150's (Union) use of two stationary banners and an inflatable rat near the public entrance of a trade show induced or encouraged persons engaged in commerce to refuse to handle or work on goods or perform services and threatened, coerced or restrained Lippert Components (Employer) and other persons engaged in commerce in violation of Section 8(b)(4)(i) and (ii)(B). (GC Exh. (1(a), 1(c).) A hearing took place on May 14, 2019 before Administrative Law Judge Kimberly Sorg-Graves, after which she issued a decision on July 15, 2019 recommending dismissal of the Complaint. *See Operating Engineers Local 150 (Lippert Components)*, JD-57-19 (July 15, 2019). On October 27, 2020, the Board issued a Notice and

Invitation to File Briefs, which invited the parties and interested *amici* to address the following questions:

1. Should the Board adhere to, modify, or overrule *Carpenters Local 1506 (Eliason & Knuth of Arizona)*, 355 NLRB 797 (2010), and *Sheet Metal Workers Local 15 (Brandon Regional Medical Center) (Brandon II)*, 356 NLRB 1290 (2011)?
2. If you believe the Board should alter its standard for determining what conduct constitutes proscribed picketing under Section 8(b)(4), what should the standard be?
3. If you believe the Board should alter its standard for determining what nonpicketing conduct is otherwise unlawfully coercive under Section 8(b)(4), what should the standard be?
4. Why would finding that the conduct at issue in this case violated the National Labor Relations Act under any proposed standard not result in a violation of the Respondent's rights under the First Amendment?

Counsel for then-General Counsel Peter Robb filed a brief with the Board on November 27, 2020 urging the Board, *inter alia*, to overrule *Eliason* and *Brandon II*, reverse the ALJ, and find the Union's use of banners and an inflatable rat violated Section 8(b)(4)(i) and (ii)(B). The case is currently pending before the Board.

Former General Counsel Robb's term ended on January 20, 2021 and Acting General Counsel Peter Sung Ohr was designated by President Biden on January 25, 2021. Acting General Counsel Ohr disagrees with the recommendations set forth in former General Counsel Robb's brief to overturn Board law and find the Union's conduct violative of Section 8(b)(4). Indeed, the Union's conduct here is lawful under the Board's holdings in *Eliason* and *Brandon II* and the reasoning of every federal court to consider the issue. *See, e.g., Overstreet v. United Bhd. of Carpenters, Local Union No. 1506*, 409 F.3d 1199 (9th Cir. 2005) (affirming denial of Section 10(l) injunction as there

was no likelihood of success on the merits of the allegation that union's use of banners violated Section 8(b)(4)); *Gold v. Mid-Atlantic Regional Council of Carpenters*, 407 F.Supp.2d 719 (D. Md. 2005) (denying Section 10(l) injunction; no reasonable cause to believe union's use of banner violated Section 8(b)(4)); *Benson v. United Bhd. of Carpenters, Locals 184 and 1498*, 337 F.Supp.2d 1275 (D. Utah 2004) (same; Section 10(l) injunction denied based on no reasonable cause); *Kohn v. Southwest Regional Council of Carpenters*, 289 F.Supp.2d 1155 (C.D. Cal. 2003) (same; Section 10(l) injunction denied based on no likelihood of success on the merits). Notably, the Board's decisions in *Eliason* and *Brandon II* governing union bannering and inflatables, and the Board's historic inability to convince the federal courts that there is even a likelihood of success and/or reasonable cause to show that such union conduct violates Section 8(b)(4), prevented former General Counsel Robb from obtaining Section 10(l) relief after issuing complaint in two recent cases. *See Ohr v. IUOE Local 150*, -- F.Supp.3d --, 2020 WL 1639987 (N.D. Ill. 2020) (denial of Section 10(l) injunction of union's use of banners and inflatables); *King v. Constr. & Building Laborers' Local 79*, 393 F.Supp.3d 181 (E.D.N.Y. 2019) (same; digital banner and inflatables).

Acting General Counsel Ohr therefore moves the Board to Remand this matter to the Regional Director so that she may withdraw the Complaint and dismiss the charge, as it is inconsistent with Board law and Circuit Court enforcement thereof. Alternatively, the Acting General Counsel moves the Board to dismiss the Complaint based on his decision to cease prosecution of the Complaint, as such pursuit is a waste of valuable Agency resources and not in the public interest.

Accordingly, Counsel for Acting General Counsel Ohr hereby moves the Board to Remand this matter to the Regional Director so that she may withdraw the Complaint in the above case or, alternatively, to dismiss the Complaint.

Respectfully submitted,

/s/ *Tiffany J. Limbach*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion of the Acting General Counsel To The National Labor Relations Board to Remand The Complaint To The Regional Director For Dismissal Or, Alternatively, To Dismiss the Complaint has been filed electronically with the Executive Secretary of the Board through the Board's E-Filing System on this 2<sup>nd</sup> day of February 2021. Copies of the filing are being served upon the following persons by electronic mail:

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