

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-230368

MAGLISH PLUMBING,
HEATING & ELECTRIC, LLC

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 February 7, 2019, alleging that Operating Engineers Local Union No. 150's (Union) use of two stationary banners and an inflatable rat at a traffic intersection near Maglish Plumbing, Heating & Electric, LLC's (Employer) facility and near the personal home construction jobsite of the Employer's owner induced or encouraged persons engaged in commerce to refuse to handle or work on goods or perform services and threatened, coerced or restrained the 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 15, 2019 before Administrative Law Judge Kimberly Sorg-Graves, after which she issued a decision on October 16, 2019, recommending

dismissal of the Complaint. *See Operating Engineers Local 150 (Maglish Plumbing, Heating & Electric, LLC)*, JD-80-19 (October 16, 2019). Counsel for then-General Counsel Peter Robb filed exceptions and a supporting brief with the Board on November 13, 2019 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 4th day of February 2021. Copies of the filing are being served upon the following persons by electronic mail:

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