

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

H&M INTERNATIONAL TRANSPORTATION, INC.

and

Case 5-CA-241380

INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION, LOCAL 1970, AFL-CIO

and

TEAMSTERS LOCAL UNION No. 822,  
affiliated with the INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, PARTY IN INTEREST

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S  
MOTION TO AMEND COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.17 and 102.24 of the Rules and Regulations of the National Labor Relations Board (the Board), Counsel for the Acting General Counsel hereby moves to amend the Complaint and Notice of Hearing dated June 11, 2020. In general, the proposed amendment: (1) adds paragraph 12(a) which adds Section 8(a)(2) allegations that are closely related to the current Complaint Section 8(a)(2) allegations; (2) marks former Complaint paragraph 12 as Complaint paragraph 12(b); (3) modifies the name spellings in Complaint paragraph 14(b); and (4) adds Complaint paragraph 14(d). The specific proposed amendment is as follows, with the amended language in bold:

**12. (a) From about January 17, 2019 to about January 23, 2019, Respondent, by Jesse DeGroot, gave assistance and support to Teamsters Local 822 by:**

**(i) urging Respondent's employees to sign Applications and Notice for Membership for Teamsters Local 822; and**

**(ii) giving Teamsters Local 822 unfettered access to Respondent's employees at the hotel where Respondent had arranged for the employees to stay while they were in Virginia.**

12. **(b)** About January 23, 2019, Respondent granted recognition to and, about January 28, 2019, entered into, and since then has maintained and enforced, a collective-bargaining agreement with Teamsters Local 822 as the exclusive collective-bargaining representative of the following employees of Respondent (the Teamsters Unit): all full-time and part-time switcher drivers, crane operators, lift drivers, and clerks.

14. **(b)** Since about January 23, 2019, Respondent, in connection with the conduct describe above in paragraphs 11 and 12, refused to hire, or consider for hire, the following employees of ITS in the Unit who applied for employment: Michelle **Clarke**, Vernon **Cuffee**, Rayeon **Ricks Jordan**, Mark Keating, Jamel Christopher Lucas, Michael McManus, Ernest Pierre Perry, and Earl Lee Smith.

14. **(d)** **From about January 23, 2019 to about August 2019, Respondent, in connection with the conduct describe above in paragraphs 11 and 12, refused to hire, or consider for hire, the following employees of ITS in the Unit who applied for employment: Darryl Halsey.**

All other aspects in the original Complaint and Notice of Hearing would remain unchanged.

Counsel for the Acting General Counsel assert that the proposed amendments are all sufficiently related to, and/or clarify allegations in the Complaint.

Counsel for the Acting General Counsel previously notified Respondent’s counsel of the intent to amend paragraph 14(b) and add paragraph 14(d) in written correspondence on January 13, 2021, and orally notified all parties of the intent to amend at the beginning of the hearing on January 25, 2021. The proposed amendments to Complaint paragraph 14 are clarifications of the allegations in the Complaint.

Counsel for the Acting General Counsel learned about the additional Section 8(a)(2) allegations through the testimony during the first week of the hearing in this matter. The proposed amendments do not significantly or materially alter the nature of the unfair labor practices alleged in the Complaint, and granting this motion will not result in undue prejudice to Respondent. *See Payless Drug Stores*, 313 NLRB No. 216, slip op. at 2 (1994) (“To be successful in amending the complaint in this case the General Counsel must demonstrate that the charge ... is closely related to the [additional] allegation.”); *see also Redd-I Inc.*, 290 NLRB 1115, 1116-1118 (1988); *Nickles Bakery of Indiana*, 296 NLRB No. 118, slip op. at 1 (1989) (“In considering the general sufficiency of a charge to support an allegation in the complaint, the Board has generally required that the complaint allegation be related to and arise out of the same situation as the conduct alleged to be unlawful in the underlying charge, although it need not be limited to the specific violations alleged in the charge.”).

The additional Section 8(a)(2) allegations arise from the same factual circumstances as set forth in the Second Amended Charge and as alleged in paragraphs 12, 13, and 24 of the Complaint. *Id.* at 2 (“In determining whether there is a sufficient nexus between the allegations in the charge and the complaint allegations, the Board examines, among other things, whether the two arise from the same factual circumstances and are based on the same legal theory.”); *see*

*also Southwest Distributing Co.*, 301 NLRB 954, 955-56 (1991). As set forth in the Second Amended Charge, the Section 8(a)(2) allegations arise from the following factual circumstances:

Since on or about January 23, 2019, the above-named Employer dominated or interfered with the formation or administration of a labor organization, in violation of Section 8(a)(2) of the Act, by recognizing the International Brotherhood of Teamsters, Local 822 as the collective-bargaining representative of the unit of its employees when it had a bargaining obligation with the International Longshoremen's Association, Local 1970 and by entering into a collective-bargaining agreement with the International Brotherhood of Teamsters, Local 822 on January 28, 2019.

Formal Papers at GC Exhibit No. 1-E, Bates no. GC pp. 33-34.

The additional Section 8(a)(2) allegations proposed in paragraph 12(a) are closely related to the existing allegations in paragraphs 12, 13, and 24 of the Complaint, are covered by the allegations in the underlying Second Amended Charge, are based on the same legal theory, and therefore granting the amendment would not result in undue prejudice to Respondent.

**WHEREFORE**, Counsel for the Acting General Counsel respectfully requests that this motion be granted.

February 23, 2021

\_\_\_\_\_  
Date

Respectfully submitted,

*/s/ Barbara Duvall*

\_\_\_\_\_  
Barbara Duvall, Esq.  
Stephanie Eitzen, Esq.  
Counsel for the Acting General Counsel  
NLRB, Region 5  
100 S. Charles St., Tower II, Ste 600  
Baltimore, MD 21201  
barbara.duvall@nrlb.gov  
stephanie.eitzen@nrlb.gov

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of February 2021, the foregoing Counsel for the Acting General Counsel’s Motion to Amend Complaint and Notice of Hearing, was served by electronic mail upon the following persons:

Stefan Marculewicz, Esq.  
Littler Mendelson, P.C.  
smarculewicz@littler.com  
**Counsel for Respondent**

Brendan Fitzgerald, Esq.  
Littler Mendelson, P.C.  
bfitzgerald@littler.com  
**Counsel for Respondent**

A. John Harper III, Esq.  
Littler Mendelson, P.C.  
ajharper@littler.com  
**Counsel for Respondent**

Brian Esders, Esq.  
Abato, Rubenstein & Abato, P.A.  
besders@abatolaw.com  
**Counsel for Charging Party**

Justin Keating, Esq.  
Beins, Axelrod, P.C.  
jkeating@beinsaxelrod.com  
**Counsel for Teamsters Local Union No. 822, affiliated with International Brotherhood of Teamsters**

*/s/ Barbara Duvall*

---

Barbara Duvall, Esq.  
Stephanie Eitzen, Esq.  
Counsel for the Acting General Counsel  
NLRB, Region 5  
100 S. Charles St., Tower II, Ste 600  
Baltimore, MD 21201  
barbara.duvall@nlrb.gov  
stephanie.eitzen@nlrb.gov