

BEFORE THE NATIONAL LABOR RELATIONS BOARD

**INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 1970,**

Charging Party,

v.

**H&M INTERNATIONAL TRANSPORTATION,
INC.,**

Respondent.

Case No. 05-CA-241380

**RESPONDENT H&M INTERNATIONAL TRANSPORTATION, INC.'S
OPPOSITION TO COUNSEL FOR THE ACTING GENERAL COUNSELS' MOTION
TO AMEND COMPLAINT AND NOTICE OF HEARING**

Respondent H&M International Transportation, Inc. ("Respondent"), by and through counsel, and pursuant to Sections 102.24, 102.25 and 102.26 of the Board's Rules and Regulations, hereby files this Motion for Leave to Supplement and File Reply in Support of its Special Appeal from the Denial of its Motion to Dismiss. In support of this Motion, Respondent states as follows:

1. On Monday, January 25, 2021, upon the opening of the record in the trial of the above-captioned proceeding, Respondent filed a Motion to Dismiss seeking to dismiss the Complaint, or in the alternative to stay further proceedings in this case on the grounds that the General Counsel lacks authority to prosecute it.

2. During arguments with respect to Respondent's Motion, Counsel for the General Counsel acknowledged that the office of the General Counsel of the Board was unoccupied, and there was no Acting General Counsel, which meant that prosecution of this case took place, at least in part, without even an Acting General Counsel.¹

¹ Late in the day on January 25, 2021, after a full day of hearing, Peter Sung Ohr was named Acting General Counsel.

3. The Administrative Law Judge denied Respondent's Motion, but granted Respondent leave to pursue its Special Appeal, which Respondent filed on January 25, 2021.

4. On February 12, 2021, Counsel for the General Counsel filed a "Notice of Ratification" in this case as well as an opposition to Respondent's Special Appeal. Charging Party also filed an opposition to Respondent's Special Appeal on the same day.

5. On February 23, 2021, Counsel for the Acting General Counsel filed a Motion to Amended Complaint and Notice of Hearing, modifying allegations contained in paragraph 12 of the Original Complaint and adding a new allegation to paragraph 14 of the Original Complaint. Because Acting General Counsel Ohr lacks authority to act under Section 3(d) of the Act due to the unlawful firing of General Counsel Robb, this Motion is improper. The points and authorities in support of Respondent's position with respect to the basis for Acting General Counsel Ohr's lack of authority to act under Section 3(d) of the Act are set forth in Respondent's Request for Special Appeal and attached documents.²

6. Respondent also seeks to add additional allegations against Respondent that are outside of the limitations period on which to issue a Complaint under Section 10(b) of the Act, as there has been no unfair labor practice charge filed alleging the violations that Counsel for the Acting General Counsel wishes to include in the Complaint and Notice of Hearing. Suffice it to say, the allegations Counsel for the General Counsel wishes to include allegedly occurred in January of 2019, or over two years ago. That is well outside of the limitations period mandated by Section 10(b).

WHEREFORE, Respondent respectfully requests that Counsel for the Acting General Counsel's Motion to Amend the Complaint and Notice of Hearing be DENIED.

² The referenced pleading is already in the electronic record of the case, and to avoid over burdening the file with attachments, Respondent incorporates said pleading and attachments by reference.

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/ Stefan Marculewicz

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Attorneys for Respondent

Dated: March 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of March, 2021, the foregoing Request has been electronically provided to the following:

Executive Secretary of the National Labor Relations Board,

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For the General Counsel,

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/s/ A. John Harper III

An Attorney for Respondent