



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
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Phoenix, AZ 85004-3099

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August 17, 2022

VIA E-MAIL

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Re: Arizona Public Service
Cases 28-CA-298130
28-CA-300287

Ladies and Gentlemen:

Arizona Public Service (Charged Party or Employer) and International Brotherhood of Electrical Workers, AFL-CIO, CLC, (Charging Party or Union) are invited to file position statements and evidence with me at the office of Region 28 of the National Labor Relations Board located at 2600 North Central Avenue, Suite 1400, Phoenix, Arizona, 85004-3099, **on or before August 24, 2022, at 12:00 p.m. (local time)**, addressing the injunctive relief issues raised in this case. Absent extraordinary circumstances, no extensions of time will be granted for the filing of these position statements.

I. The Charges

On June 23, 2022, the Union filed the charge in Case 28-CA-298130 alleging that the Employer violated Section 8(a)(1) of the National Labor Relations Act (the Act) by: creating the impression among its employees that their union and concerted activities were under surveillance; engaging in surveillance of its employees' union and concerted activities; threatening its employees with unspecified reprisals if they engaged in union and concerted

activities; interrogating its employees about their union and concerted activities; promulgating and maintaining unlawful rules; coercing its employees into listening to the Employer's anti-union sentiments; and discriminating and/or interfering with its employees' Section 7 right to access information about the benefits of unionization; and alleging that the Employer violated Section 8(a)(1) and (3) of the Act by discriminating against its employees, including Courtney Dumas and Forrest Dumas, by changing their work schedules because they engaged in union and concerted activities.

On July 26, 2022, the Union filed the charge in Case 28-CA-300287, alleging that the Employer violated Section 8(a)(1) and (3) of the Act by its actions, including, but not limited to causing the termination of its employees, including, but not limited to, Courtney Dumas, because they engaged in union and concerted activities.

II. The Warrant for Injunctive Relief

The allegations are serious violations of the Act and are under investigation. Additionally, as there was a Union organizing campaign taking place at the same time as the alleged unfair labor practices, Section 10(j) injunctive relief may be warranted. Accordingly, it may be appropriate for me to obtain from the General Counsel authorization to seek injunctive relief in Federal District Court. An injunction action would seek to have the Court issue an order that, among other things, requires the Charged Party to cease and desist from engaging in unlawful conduct, reinstate the Charging Party, and read the Federal District Court's Order to its employees.

In determining whether injunctive relief is appropriate, the Ninth Circuit considers the following four factors:

- (1) the likelihood of the party seeking injunctive relief succeeding on the merits of the case;
- (2) the likelihood of irreparable injury being suffered by the employees involved if relief is not granted;
- (3) the extent to which the balance of hardships favors the respective parties; and
- (4) whether the public interest will be advanced by the provision of preliminary relief.¹

Your position statement should address each of these factors in the context of the allegations described above. Additionally, your position statement should explain why traditional Board remedies are, or are not, sufficient to remedy the alleged unfair labor practices.

¹ In *Miller v. California Pacific Medical Center*, 9 F.3d 440 (9th Cir. 1994), the Ninth Circuit Court of Appeals considered the above traditional equitable criteria in reviewing the grant of a preliminary injunction. The Ninth Circuit has clarified the controlling standard for injunctive relief in light of the Supreme Court's decision in *Winter v. Natural Res. Def. Council*, 555 U.S. 7 (2008). See *Frankl v. HTH Corp.*, 650 F.3d 1334 (9th Cir. 2011).

This explanation should include how the alleged violations may or may not have impacted on the Union activities of the Charged Party's employees and the level of support for the Union exhibited by employees. Among other things, you should present evidence concerning the following:

- (1) any diminution of support for the Union, or lack thereof, among the Employer's employees, including statements by employees, reluctance by employees to speak to Union agents, attendance at meetings held by the Union, requests for return of authorization cards, employee anti-union petitions or anti-union demonstrations and reluctance of employees to serve in leadership positions for the Union;
- (2) the extent of the Union's card majority, whether there exists any demonstrable loss of majority, and/or dissemination of the alleged unfair labor practice violations among employees;
- (3) the number and percentage of unit employees subject to the alleged unfair labor practices, whether any of the alleged unfair labor practices constitute "hallmark" violations of the Act, the extent of knowledge among employees of the alleged unfair labor practices, and any mitigating factors since the time of the violations, including employee turnover, change in management, or voluntary remediation; and
- (4) the extent of the discriminatees Courtney Dumas' and Forrest Dumas' Union activities, including whether they were perceived as a leader by other employees and whether Courtney Dumas desires reinstatement and, if not, why.

III. Electronic Filing

Position letters must be filed electronically by using the E-Filing system on the Agency's web site. To file documents electronically, go to www.nlr.gov, click on **E-File Documents**, and follow the detailed instructions.

IV. Your Obligation to Cooperate with the Investigation

Please understand that this request for a position statement on the warrant for 10(j) relief is separate and different from our request that you fully cooperate in the investigation of the merits of the charges and does not constitute a substitution for such full cooperation. Full cooperation with our investigation into the merits of the charges includes making witnesses available in a timely fashion for the taking of affidavits by a Board Agent. The submission of a position statement on the merits of the charges, by itself, does not constitute full cooperation in the investigation.

Should you have any questions regarding this matter, do not hesitate to speak with the Board agent who has been assigned to investigate this unfair labor practice charges.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cornele A. Overstreet", is centered on the page. The signature is written in a cursive style with a long horizontal stroke at the end.

Cornele A. Overstreet
Regional Director

CAO/JED/dmm