

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

CONTEMPORARY CARS, INC. D/B/A)		
MERCEDES-BENZ OF ORLANDO AND)		
AUTONATION, INC., SINGLE AND JOINT)		
EMPLOYERS)		
)	Charge Nos.	12-CA-26126
and)		12-CA-26233
)		12-CA-26306
INTERNATIONAL ASSOCIATION OF)		12-CA-26354
MACHINISTS AND AEROSPACE)		12-CA-26386
WORKERS, AFL-CIO)		12-CA-26552

**RESPONDENTS CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO AND AUTONATION, INC.’S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Come now Respondents CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO (“MBO”) and AUTONATION, INC. (“AutoNation” or collectively “Respondents”), by and through undersigned Counsel, and, pursuant to Section 102.24 of the Board’s Rules and Regulations, as amended, hereby moves for partial summary judgment as set forth below, based upon yesterday’s decision of the U.S. Supreme Court in *New Process Steel, L.P. v. National Labor Relations Board*, 564 U.S. 840, Case No. 08-457 (2010) and its impact on a substantial number of intertwining issues raised in these consolidated cases, along with those pending before the U.S. Circuit Court of Appeals for the D.C. Circuit in Case Nos. 09-1235 and 09-1248. In support of this Motion, Respondents show as follows:

1. The Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing in the instant case was issued on March 31, 2010. The Order Further Consolidating Cases and Amendment to Consolidated Complaint was entered on June 8, 2010, alleging, *inter alia*, that Respondents refused to bargain, in violation of Sections 8(a)(1) and (5) of the National Labor Relations Act (“NLRA”). These matters have since been set for an evidentiary hearing to be

conducted in Orlando, Florida on June 21, 2010. A substantial number of the allegations underlying the Amended Consolidated Complaint pre-suppose a duty to bargain on the part of Respondents, as set forth in Paragraph 51, which refers to no less than a dozen sub-paragraphs alleging conduct in violation of Section 8(a)(5) of the Act.

2. These matters have their genesis in a representation petition that was filed on October 3, 2008 in Case No. 12-RC-9344. Respondent Mercedes-Benz of Orlando (“MBO”) subsequently challenged the petitioned-for bargaining unit, leading to a unit determination hearing that was conducted by the Region on October 17 and 21, 2008. Following the submission of Post-Hearing Briefs, the Region issued a decision on November 14, 2008, rejecting the Respondent’s position, and directing an election among only those employees in the petitioned-for unit.

3. MBO filed a timely Request for Review of the Region’s unit determination decision with the NLRB on December 5, 2008. In a two-member decision, the Board denied that Request on December 15, 2008. On December 16, 2008, a representation election was conducted among those employees in the unit deemed appropriate by the Region. A final tally of ballots issued on February 9, 2009, and the results were subsequently certified on February 11th.

4. Respondent subsequently engaged in a technical challenge of that certification, culminating in another decision by the two-member Board on August 28, 2009, affirming Summary Judgment and holding that MBO violated Sections 8(a)(1) and (5) by refusing to recognize and bargain with the Union. *See Contemporary Cars, Inc.*, 354 NLRB No. 72 (2009).

5. Respondent denied that it had any such obligation, and on September 3, 2009, filed a timely Petition for Review, seeking summary reversal of the Board’s final order with the United States Court of Appeals for the District of Columbia in Case Nos. 09-1235 and 09-1248. Among other things, Respondent referred to the Circuit Court’s previous decision in *Laurel Baye Healthcare of Lake*

Lanier, Inc. v. NLRB, 564 F. 3d 469 (D.C. Cir. 2009), in which the Court held that the NLRB did not possess the authority to issue orders on pending matters, as it lacked sufficient members to meet the quorum requirements of Section 3(b) of the NLRA. which were ordered to be held in abeyance pending further order of the court on October 16, 2009.

6. On October 16, 2009, the Court of Appeals for the D.C. Circuit “Ordered that the cases be held in abeyance, and [that] consideration of the motion for summary reversal be deferred, pending further order of the Court.”

7. On June 17, 2010, the tenets of the *Laurel Baye* decision were sustained by the U.S. Supreme Court through its holding in *New Process Steel*, which found that the Board lacked authority to render enforceable decisions while operating as a two-member body. In so doing, the Court effectively nullified the Board’s decisions set forth above, as previously rendered on December 15, 2008 and August 28, 2009. In rendering the former decision a nullity, the Court by implication also invalidated the Certification of Election Results as issued by the Region on February 11, 2009. In rendering the latter decision a nullity, the Court obliterated any premise upon which to assert a duty to bargain. As of the date of this Motion, no such duty exists, retroactive to the representation election.

8. In less than 24 business hours, the Board is planning to conduct an evidentiary hearing that erroneously pre-supposes a duty to bargain, as expressly stated in Paragraphs 9(a)-(c), 40(a)-(b), 41(b)-(c), 43(a)-(e), 45, 46, 47, 48, and 51 of the Amended Consolidated Complaint, despite the fact that the highest Court in the land has ruled that the Board had no legal authority to impose such an obligation.

9. Many of the issues in these consolidated cases are now mooted by the Supreme Court's ruling in *New Process Steel* and the D.C. Circuit's impending ruling summarily reversing the Board's holding (and thus the certification of the Union) in Case No. 12-CA-26377. Respondents cannot and should not be required to go forward and produce evidence or otherwise litigate these cases unless and until Counsel for the General Counsel amends the Amended Complaint to withdraw those allegations premised on the Board's certification of the Union as the exclusive bargaining representative of technicians working for Respondent.

10. The parties in this matter conducted a telephonic conference on the morning of June 18th, 2010, at which point Counsel for Respondent verbally conveyed a summary of the points set forth within this Motion, requesting a partial dismissal of all Amended Consolidated Complaint paragraphs that erroneously pre-suppose a duty to bargain, and in the alternative, requesting an immediate continuance of these proceedings. In response, the Administrative Law Judge made clear that she was not at liberty to issue any such ruling within the context of the conference call, and directed Respondents to pursue these Motions through appropriate regulatory channels.

11. With this Motion, Respondents hereby seek Summary Judgment as to Paragraphs 9(a)-(c), 40(a)-(b), 41(b)-(c), 43(a)-(e), 45, 46, 47, 48, and 51, of the Amended Consolidated Complaint, and respectfully request that all allegations set forth therein be immediately dismissed.

12. Given the impending time constraints, Respondents respectfully urge the Board to act precipitously.

Respectfully submitted this 18th day of June, 2010.

WHEREFORE, Respondents pray that the Amended Consolidated Complaint be partially dismissed as set forth herein.

Respectfully submitted this 18th day of June, 2010.

/s/ Steven M. Bernstein
DOUGLAS R. SULLENBERGER
STEVEN M. BERNSTEIN
BRIAN M. HERMAN
For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENTS
CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO AND
AUTONATION, INC.

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2010, I e-filed the foregoing **RESPONDENTS CONTEMPORARY CARS, INC. D/B/A MERCEDES-BENZ OF ORLANDO AND AUTONATION, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT** using the Board's e-filing system and that it was served by electronic mail on the following:

Rochelle Kentov
Regional Director
National Labor Relations Board, Region 12
201 East Kennedy Blvd., Suite 530
Tampa, FL 33602
Rochelle.Kentov@nlrb.gov

Rafael Aybar
Counsel for the General Counsel
National Labor Relations Board, Region 12
201 East Kennedy Blvd., Suite 530
Tampa, FL 33602
Rafael.Aybar@nlrb.gov

And by Federal Express to:

David Porter
100 Bent Tree Drive, Apt. 110
Daytona Beach, FL 32114

Christopher T. Corsen
General Counsel
International Association of Machinists
and Aerospace Workers, AFL-CIO
9000 Machinists Place, Room 202
Upper Marlboro, MD 20772

cc: Associate Chief Judge Cates

/s/ Steven M. Bernstein
DOUGLAS R. SULLENBERGER
STEVEN M. BERNSTEIN
BRIAN M. HERMAN
For FISHER & PHILLIPS LLP
COUNSEL FOR RESPONDENT
CONTEMPORARY CARS, INC. D/B/A
MERCEDES-BENZ OF ORLANDO AND
AUTONATION, INC.