

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

GELITA USA INC.

and

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1142

Case 18-CA-18406

**MOTION TO ISSUE DECISION AND ORDER
ON PREVIOUSLY FILED EXCEPTIONS AND BRIEFS**

James L. Fox, Counsel for the Acting General Counsel, pursuant to Section 102.24 of the National Labor Relations Board's Rules and Regulations, files this Motion to Issue Decision and Order on Previously Filed Exceptions and Briefs in Gelita U.S.A. Inc., Case 18-CA-18406.

In support of this Motion, Counsel for the Acting General Counsel submits the following:

1. On December 21, 2007, Administrative Law Judge William N. Cates issued a Decision in this matter. Judge Cates issued findings of fact and conclusions of law, and recommended that an order issue directing Respondent Gelita USA Inc. to cease and desist from violating Section 8(a)(1) of the Act by interrogating its employees about their support for the Union; by promising employees to resolve any problems if they abandon their pursuit of union representation; and by threatening employees that they would have no job protection if they engage in an economic strike on behalf of the Union should they select the Union to represent them. Judge Cates also found that

Respondent accelerated the termination of employee Heidi Young in violation of Section 8(a)(3) of the Act because she supported the Union and to prevent her from voting in a scheduled Board-conducted representation election in Case 18-RC-17500.

2. On January 16, 2008, Respondent filed exceptions to Judge Cates's findings and conclusions that Respondent violated the Act. On April 30, 2008, a two-member panel consisting of Chairman Schaumber and Member Liebman issued a Decision, Order and Direction (352 NLRB 406), affirming the decision by Judge Cates.

3. On June 17, 2010, the United States Supreme Court issued a decision in *New Process Steel, LP v. NLRB*, holding that the two-member Board lacked authority to issue decisions. 560 U.S. ____ (2010). Among these decisions was the decision described above in paragraph 1.

4. On June 16 and 30, 2010, Charging Parties Qudsia S. Hussaini and United Food and Commercial Workers International Union, Local 1142 (Union) filed charges in Cases 18-CA-19458 and 18-CA-19478, respectively, alleging that Gelita USA terminated employees Qudsia Hussaini, Michael Kelly, Dustin Livermore, Lisa Theisen and Kathy White because of their activities on behalf of the Union, and that Gelita USA engaged in other conduct violative of Section 8(a)(1) of the Act.

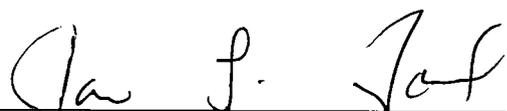
5. On September 3, 2010, the Regional Director for Region 18, for and on behalf of the Acting General Counsel, issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 18-CA-19458 and 18-CA-19478. The consolidated complaint alleges that Respondent unlawfully threatened employees with job loss and unspecified changes in working conditions; unlawfully conveyed to an employee that the employee's union activity was under surveillance; unlawfully informed

employees that they received lower performance evaluations because of their union activity; unlawfully promised an employee rewards because of the employee's anti-union activity; and unlawfully terminated employees Qudsia Hussaini, Michael Kelly, Dustin Livermore, Lisa Theisen and Kathy White because of their support for, or perceived support for, the Union.

6. An important aspect of Counsel for the Acting General Counsel's prima facie case in Cases 18-CA-19458 and 18-CA-19478 is Respondent's unlawful conduct found by Judge Cates in the decision described above in paragraph 1. Indeed, the conduct alleged as unlawful in the September 3, 2010 consolidated complaint is a continuation of the unlawful conduct set forth in the record of the prior case. In addition, the evidence contained in that record constitutes evidence of Union animus, particularly because the same supervisors and agents of Respondent are involved in both the conduct described in the Judge Cates decision and alleged in the current cases, 18-CA-19458 and 18-CA-19478.

WHEREFORE, Counsel for the Acting General Counsel respectfully requests that the duly constituted Board consider Respondent's exceptions to Judge Cates's decision, together with the record and parties' briefs, and issue a Decision and Order in Case 18-CA-18406.

Dated: September 7, 2010


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STATEMENT OF SERVICE

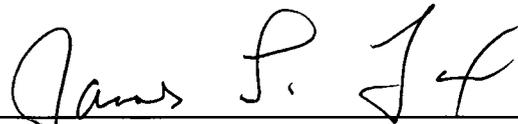
The undersigned hereby certifies that a copy of the **Motion to Issue Decision and Order on Previously Filed Exceptions and Briefs** was filed via e-filing, and served on the following parties by e-mail on September 7, 2010:

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