

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

MCD PLUMBING, INC.

and

DMS MECHANICAL SERVICES, LLC

and

MICHAEL STACHOWIAK d/b/a DMS SERVICES

and

MICHAEL DIEBOLD, Individually

Case 03-CA-076777

and

**UNITED ASSOCIATION, PLUMBERS
& STEAMFITTERS LOCAL UNION #22**

**MOTION TO DISMISS BY RESPONDENTS DMS MECHANICAL SERVICES, LLC
and MICHAEL STACHOWIAK d/b/a DMS SERVICES**

Respondents DMS Mechanical Services, LLC (“DMS Mechanical”) and Michael Stachowiak d/b/a DMS Services (“DMC Services”)(referred herein collectively as “DMS Respondents”), by their undersigned attorneys, Zdarsky, Sawicki & Agostinelli LLP, pursuant to 29 CFR § 102.24, hereby move to dismiss the Complaint “Complaint”) filed by Rhonda P. Ley, Regional Director, Region 3, of the National Labor Relations Board (“NLRB”) because the claims asserted against the DMS Respondents in the Complaint are barred by the six month statute of limitations set forth in Section 10(b) of the NLRA.

As alleged in ¶ I(a) of the Complaint, the original charge in this proceeding was filed by the Union on March 16, 2012, served by regular mail on Respondent MCD Plumbing, Inc. on March 19,

2012, and on Respondents DMS Services and DMS Mechanical on April 19, 2012. The first page of Attachment “A” to the Complaint is an October 16, 2011 letter (dated more than six months prior to the alleged service of the original charge upon the DMS Respondents) from Michael McNalty, the Union’s Business Manager, addressed to Respondent Diebold and Respondnet MCD Plumbing, Inc. The Complaint alleges conduct, allegedly attributable to the DMS Respondents, dating back to April 1, 2011 regarding Respondent DMS Services [Complaint ¶ VI(b)] and August 8, 2011 [Complaint ¶ VI(c)] regarding DMS Mechanical, substantially more than six months prior to the service and filing of the charge against DMS Respondents. See, 29 U.S.C. § 160(b) [NLRA § 10(b)]

WHEREFORE, Respondents DMS Mechanical Services, LLC and Michael Stachowiak d/b/a DMS Services respectfully submit that the Complaint against them should be dismissed.

Dated: Buffalo, New York
December 26, 2012

Respectfully Submitted,

ZDARSKY, SAWICKI & AGOSTINELLI LLP

By: s/Gerald T. Walsh

Gerald T. Walsh

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STATEMENT AND CERTIFICATE OF SERVICE

The undersigned, an attorney at law, duly licensed and admitted to practice law in the State of New York by the New York State Supreme Court, Appellate Division, Fourth Department, the United States District Court for the Western District of New York, the United States Court of Appeals for The Second Circuit, and the United States Supreme Court, hereby certifies that the DMS Respondents' Motion to Dismiss was electronically filed December 26, 2012 and served by personal delivery* or overnight delivery** to each of the following parties and attorneys:

RHONDA P. LEY, REGIONAL DIRECTOR*
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Dated: Buffalo, New York
December 26, 2012

s/Gerald T. Walsh
Gerald T. Walsh