



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 28  
2600 N CENTRAL AVE  
STE 1400  
PHOENIX, AZ 85004-3019

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (602)640-2160  
Fax: (602)640-2178

September 17, 2020

*Sent via email only to:*

Ross M. Gardner, Attorney at Law  
Jackson Lewis P. C.,  
10050 Regency Circle, Suite 400,  
Omaha, NE 68114-3721  
Email: [gardnerr@jacksonlewis.com](mailto:gardnerr@jacksonlewis.com)

Caren P. Sencer Esq.  
Weinberg Roger & Rosenfeld  
1001 Marine Village Parkway Ste 200  
Alameda, CA 94501  
Email: [csencer@unioncounsel.net](mailto:csencer@unioncounsel.net)

Re: Cemex Construction Materials Pacific LLC  
Cases 28-CA-230115, 28-CA-235666, 31-  
CA-237882, 31-CA-237894, 31-CA-  
238094, 31-CA-238239, 31-CA-238240,  
28-CA-249413

Dear Counsel:

This letter is to afford you an opportunity to present any additional evidence you may wish the Region to consider with respect to the appropriateness 10(j) relief. The International Brotherhood of Teamsters (Charging Party or Union) and Cemex Construction Materials Pacific LLC (Charged Party or Employer) are invited to file position statements with me on or before **September 24, 2020**, addressing the injunctive relief issues raised in these cases. Absent extraordinary circumstances, no extensions of time will be granted for the filing of these position statements.

**I. The Complaint and Notice of Hearing**

On April 30, 2020, the Regional Director for Region 28 issued a Complaint and Notice of Hearing (Complaint) alleging that the Charged Party violated Sections 8(a)(1) and (3) of the National Labor Relations Act (Act) by, among other acts, threatening employees with loss of work hours, loss of vacation time, loss of benefits, discipline, replacement, closure of facilities, termination, and unspecified reprisals because of employees' union activities and/or in order to discourage union activities; prohibiting employees from talking to the Union; prohibiting employees from wearing Union stickers or displaying signs in support of the Union; interrogating employees about their union activities; surveilling and/or creating the impression

that the Employer is surveilling employees' union activities; making statements that employees' union activities were futile; blocking and/or intimidating voters from using the entrance to the plant and voting area; ceasing to assign temporary batchman duties because of employees' union activities; and suspending and discharging employee Diana Ornelas because she engaged in union activities, and to discourage her, and other employees, from engaging in such activities.

## **II. The Warrant for Injunctive Relief**

In view of the allegations in the unfair labor practice charges cited above, it may be appropriate for me, *sua sponte*, to obtain from the Board authorization to seek injunctive relief in Federal District Court under Section 10(j) of the Act. An injunction action would seek to have the Court issue an order that would require the Employer to, among other things, (a) cease and desist from disciplining and discharging employees in retaliation for their union activities, (b) to cease and desist from engaging in the alleged independent violations of Section 8(a)(1) and Section 8(a)(3) of the Act. An injunction action would also seek to have the Court issue an order requiring the Employer to reinstate the aforementioned employee to her former position; require the Employer to bargain with the Union pursuant to a *Gissel* bargaining order; and require the Employer to read the Court's Order to its employees. Finally, an injunction would seek other appropriate interim relief under the standards of the Ninth Circuit Court of Appeals.

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.<sup>1</sup>

Your position statement should address each of these factors in the context of the allegations described above, particularly in light of the extant Complaint and in consideration of whether a fair re-run election can take place if necessary. Additionally, your position statement should explain why traditional Board remedies are, or are not, sufficient to remedy the alleged unfair labor practices. This explanation should include how the alleged violations may or may not have impacted the Union activities of the Charged Party's employees and the level of support

---

<sup>1</sup> 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).

for the Union exhibited by employees, including support after the March 13, 2019, election in Case 28-RC-232059. Among other things, you should present evidence concerning the following:

- (1) any diminution of support for the Union, or lack thereof, among the 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 terminated employees' Union activities, including whether they were perceived as pro-Union or Union advocates by other employees and whether they desire reinstatement and, if not, why.

### **III. Electronic Filing**

Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission.

### **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 charge and does not constitute a substitution for such full cooperation. Full cooperation with our investigation into the merits of the charge 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 charge, by itself, does not constitute full cooperation in the investigation.

September 17, 2020

Should you have any questions regarding this matter, do not hesitate to speak with Fernando J. Anzaldúa, the Field Attorney who has been assigned to investigate this unfair labor practice charge, at (602) 416-4757, or [fernando.anzaldua@nrb.gov](mailto:fernando.anzaldua@nrb.gov).

Very truly yours,

*/s/ Cornele A. Overstreet*

Cornele A. Overstreet  
Regional Director