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Subject: Portola Gardens, 20-CA-246636 (case-closing email)
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The Region submitted this case for advice on whether the successor Employer refused to recognize and bargain with the Union in violation of Section 8(a)(5). We conclude the Union's April 2019 charge should be dismissed as untimely, absent withdrawal, because the Union knew, or should have known, that the Employer was refusing to recognize and/or bargain with it by at least June 2018.

The Union represented a unit of service and maintenance employees of the predecessor employer, with the most recent collective-bargaining agreement in effect from July 1, 2016 to June 30, 2019. However, sometime in 2017, the Union learned that the predecessor employer had declared bankruptcy and stopped remitting Union dues payments for unit employees. In February 2018, the Employer began operating the facility and immediately made significant changes to employees' wages, benefits and other terms and conditions of employment. In April 2018, the Union filed a grievance demanding that the Employer continue remitting check off dues to the Union. In response to the Union's grievance, the Employer stated: "there is no CBA applicable to [the Employer] and, thus, there is no dues deduction provision . . . nor is there a grievance process applicable to these employees. The [Employer] which was never a party to any CBA with Local 2015, is not obligated, nor authorized, to deduct dues, nor is it bound by, or obligated to participate in, any grievance process." The Union did not respond to the Employer's rejection. Instead, the Union subsequently filed the exact same grievance in May and again in June 2018 to which the Employer never responded. On August 14, 2019, the Union filed a Section 8(a)(5) charge alleging that the Employer refused to bargain with the Union.

Section 10(b) provides "[t]hat no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." It is firmly established that the 10(b) period commences when a party has clear and unequivocal notice of the violation of the Act, or where a party in the exercise of reasonable diligence should have become aware that the Act had been violated. *See, e.g., Carrier Corp.*, 319 NLRB 184 (1995); *Mine Workers District 17*, 315 NLRB 1052 (1994); *Moeller Bros. Body Shop*, 306 NLRB 191, 192-93 (1992). We conclude that under the particular facts of this case, the charge should be dismissed as untimely, absent withdrawal, because the Union knew, or should have known, that the Employer was refusing to recognize and/or bargain with it in April-June 2018. The Union's April 2018 grievance was the Union's first attempt to demand compliance with the predecessor's CBA. Not only did the Employer incontrovertibly reject any obligation to deduct dues or participate in the grievance procedure—two fundamental interests of any recognized bargaining representative—but it also claimed that it was never party to any contract with the Union. This total repudiation of the predecessor's contract should have put the Union on notice in April 2018 that the Employer did not recognize the Union as the collective bargaining representative of its employees, and that it did not intend to bargain with the Union. *See A & L Underground*, 302 NLRB 467, 468 & n.6 (1991) (8(a)(5) charges untimely where employer had previously communicated its repudiation of contract and refusal to recognize and bargain with union by stating its intent to now operate as "nonunion"). The fact that the Employer completely ignored

the Union's subsequent May and June 2018 grievances should have removed any doubt about the Employer's intentions; nevertheless, the Union did not file the instant charge until more than a year later in August 2019, well outside the 10(b) period. Therefore, the charge should be dismissed, absent withdrawal.

This email closes this case in Advice. Please contact us with any questions or concerns. Thank you.

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