

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

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| JENNIFER A. HADSALL, Regional Director of Region 18 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,<br><br><p style="text-align:center">Petitioner</p><br><br><p>v.</p><br><br>SUNBELT RENTALS, INC.,<br><br><p style="text-align:center">Respondent</p> | Civil No. |
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**PETITION FOR INJUNCTION UNDER SECTION 10(j)  
OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED**

Jennifer A. Hadsall, Regional Director for Region 18 of the National Labor Relations Board (the Board), petitions this Court on behalf of the Board for injunctive relief pursuant to Section 10(j) of the National Labor Relations Act, as amended (the Act), pending the final disposition of the Board’s administrative complaints against Sunbelt Rentals, Inc. (Respondent). 29 U.S.C. § 160(j). The complaints charge that Respondent violated and continues to violate Section 8(a)(1), (3) and (5) of the Act, which prohibits employers from engaging in the following unfair labor practices: coercing employees in the exercise of their right to join or form unions; discriminating against employees because of their union activity; and failing and refusing to bargain collectively and in good faith with the exclusive-collective bargaining representative of its employees. 29 U.S.C. § 158(a)(1), (3), (5).

In support of this Petition for Injunction (Petition) under the Act, Petitioner respectfully shows as follows:

## Jurisdiction

1. Petitioner is the Regional Director of Region 18 of the Board, an agency of the United States, and files this Petition for and on behalf of the Board.
2. Jurisdiction of this proceeding is conferred upon this Court by Section 10(j) of the Act. 29 U.S.C. § 160(j). Section 10(j) grants the Board the power, upon issuance of the complaints described below in paragraphs 5 and 9, to petition any United States District Court, within any district wherein the unfair labor practices in question are alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. *Id.* Upon the filing of any such petition, Section 10(j) directs the Court to cause notice to be served upon such person, and thereupon confers jurisdiction upon the Court to grant to the Board such temporary relief or restraining order where it deems such relief just and proper. *Id.*
3. At all material times, Respondent has been a corporation with an office and place of business in Franksville, Wisconsin (Respondent's facility), and has been engaged in the business of renting and selling construction equipment within this judicial district.

### Underlying Charges, Complaints and Administrative Proceedings to Date

4. The International Union of Operating Engineers Local 139, AFL-CIO (the Union), pursuant to the provisions of the Act, filed the following charges and amended charges with the Board alleging that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of the below-specified sections of the Act. Copies of the charges are attached as exhibits to this Petition as identified in the below table.

| Case Number  | Date Filed        | Section of the Act  | Exhibit No. |
|--------------|-------------------|---|-------------|
| 18-CA-236643 | February 26, 2019 | 8(a)(1) and (5)<br>(29 U.S.C. § 158(a)(1), (5))           | 1           |
| 18-CA-238989 | April 3, 2019     | 8(a)(1), (3) and (4)<br>(29 U.S.C. § 158(a)(1), (3), (4)) | 2           |

|                           |                  |   |   |
|---------------------------|------------------|---|---|
| 18-CA-238989<br>(Amended) | May 30, 2019     | 8(a)(1) <sup>1</sup><br>(29 U.S.C. § 158(a)(1))                     | 3 |
| 18-CA-247528              | August 30, 2019  | 8(a)(1), (3), (4) and (5)<br>(29 U.S.C. § 158(a)(1), (3), (4), (5)) | 4 |
| 18-CA-247528<br>(Amended) | October 17, 2019 | 8(a)(1), (3), (4) and (5)<br>(29 U.S.C. § 158(a)(1), (3), (4), (5)) | 5 |

5. On June 19, 2019, following a field investigation during which all parties had an opportunity to submit evidence, Petitioner, acting on behalf of the General Counsel of the Board pursuant to authority delegated to Petitioner, issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, pursuant to Section 10(b) of the Act in Cases 18-CA-236643 and 18-CA-238989, alleging that Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. 29 U.S.C. §§ 160(b) and 158(a)(1), (5). A copy of the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing is attached as Exhibit 6.

6. On August 2, 2019, an Order Rescheduling Hearing issued, rescheduling the hearing to commence on September 23, 2019, because a new charge was filed against Respondent in Case 18-CA-244986.<sup>2</sup> That Order is attached as Exhibit 7.

7. On August 13, 2019, an Order Further Rescheduling Hearing issued, pursuant to Respondent's request, rescheduling the hearing to October 7, 2019. That Order is attached as Exhibit 8.

8. On September 20, 2019, a third Order Rescheduling Hearing issued, setting the hearing date for November 18, 2019, because another charge against Respondent was filed in Case 18-CA-247528. That Order is attached as Exhibit 9.

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<sup>1</sup> The Union amended out the previously filed 8(a)(3) and (4) allegations in Case 18-CA-238989. 29 U.S.C. § 158(a)(3), (4).

<sup>2</sup> That charge was investigated and ultimately dismissed by Petitioner.

9. On November 1, 2019, following a field investigation during which all parties had an opportunity to submit evidence upon the charge and amended charge in Case 18-CA-247528, Petitioner, acting on behalf of the General Counsel of the Board pursuant to authority delegated to Petitioner, issued a complaint in Case 18-CA-247528, alleging that Respondent engaged in and is in engaging in, unfair labor practices within the meaning of Section 8(a)(1), (3), (4) and (5) of the Act.<sup>3</sup> 29 U.S.C. § 158(a)(1), (3), (4), (5). A copy of the Complaint in Case 18-CA-247528 is attached as Exhibit 10.

10. On November 1, 2019, Petitioner issued an Order Further Consolidating Cases and a Notice of Hearing. By that Order, Case 18-CA-247528 was consolidated with Cases 18-CA-236643 and 18-CA-238989, and the matter was set for hearing on November 18, 2019. A copy of that Order and Notice of Hearing is attached as Exhibit 11.

11. On November 1, 2019, Petitioner issued an Amendment to Consolidated Complaint in Case 18-CA-236643 and 18-CA-238989. A copy of the Amendment to Consolidated Complaint is attached as Exhibit 12.

12. On November 8, 2019, upon a motion to postpone by Respondent and with the consent of all parties, Petitioner issued an Order Rescheduling Hearing, setting the date for hearing as December 16, 2019. A copy of this Order is attached as Exhibit 13.

13. The hearing in this matter opened on December 16, 2019, and continued through December 18, 2019, in front of Administrative Law Judge Michael A. Rosas. The hearing was not completed at that time due to a privilege review by an appointed Special Master of

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<sup>3</sup> While the complaint in Case 18-CA-247528 includes the allegation that Respondent violated Section 8(a)(4) of the Act by discriminating against employees because the Union filed charges and/or because the employees gave testimony under the Act, Petitioner is not seeking injunctive relief on the basis of that allegation. 29 U.S.C. § 158(a)(4).

documents subpoenaed from Respondent. The hearing is now set to resume on February 18, 2020, and is expected to conclude that week. At the conclusion of that hearing, the Administrative Law Judge will issue a decision and recommended order. The order will be appealable to the Board and will have no force or effect absent further action by the Board.

**Allegations to be Litigated in the Underlying Administrative Proceeding for which Injunctive Relief is Being Sought**

14. In the underlying administrative proceeding in Cases 18-CA-236643, 18-CA-238989, and 18-CA-247528, Petitioner has shown a likelihood of success of establishing the following:

*Respondent is an Employer Under the Act*

(a) As noted above in paragraph 3, at all material times, Respondent has been a corporation with an office and place of business in Franksville, Wisconsin, and has been engaged in the business of renting and selling construction equipment.

(b) During the calendar year ending December 31, 2018, Respondent, in conducting its operations described above in subparagraph 14(a), purchased and received at its Franksville, Wisconsin facility goods valued in excess of \$50,000 directly from points outside the State of Wisconsin.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. 29 U.S.C. § 152(2), (6), (7).

*The Union is a Labor Organization Under the Act*

(d) At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. 29 U.S.C. § 152(5).

Respondent's Supervisors

(e) The individuals listed below are supervisors of Respondent within the meaning of Section 2(11) of the Act and held the positions listed next to their names for the indicated periods of time. 29 U.S.C. § 152(11).

| <b>Name</b>              | <b>Job Title</b>   |
|--------------------------|--|
| Jason Mayfield           | Regional Vice President<br>(February 12, 2018, to present)           |
| Robert (Bo) Bogardus III | District Manager<br>(February 12, 2018, to July 7, 2019)             |
| Bryan Anderson           | Profit Center Manager<br>(May 1, 2018, to present)                   |
| Chris Pender             | Service Manager<br>(July 2, 2018, to November 11, 2019)              |
| Rebel Blake Strohmeyer   | Regional Human Resources Manager<br>(February 12, 2018, to present)  |
| Robert Rivera            | Profit Center Manager<br>(February 12, 2018, to present)             |
| Vicky Gibson             | Territory Human Resources Manager<br>(February 12, 2018, to present) |

Unit Description, Union Certification and Union Section 9(a) Status

(f) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, 29 U.S.C. § 159(b):

All full-time and regular part-time mechanics, drivers, and foremen, employed by [Respondent] at profit center 776 in Franksville, Wisconsin, excluding all other employees, clerical staff, salespeople, managers, guards, and supervisors, as defined in the Act.

(g) On March 13, 2018, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

(h) At all times since March 13, 2018, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit and has requested that

Respondent meet and bargain in good faith with it for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours and other terms and conditions of employment. 29 U.S.C. § 159(a).

*Respondent's Initial Bad Faith Bargaining After Certification*

(i) Since about March 13, 2018, and continuing to date, Respondent has been refusing to meet at reasonable times and places for bargaining.

(j) (i) Since about February 8, 2019, and continuing thereafter, the Union requested that Respondent bargain collectively about wages.

(ii) Since about February 8, 2019, Respondent has failed and refused to bargain collectively about wages by insisting that all non-economic issues be resolved before bargaining about wages.

(iii) The subject of wages is a mandatory subject for the purposes of collective bargaining.

(k) At all times since March 13, 2018, Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit by its overall conduct, including:

- (i) bargaining with no intention of reaching agreement;
- (ii) failing to explain justifications for certain proposals;
- (iii) engaging in the conduct described below in subparagraphs 14(m)-(o);
- (iv) engaging in the conduct described above in subparagraph 14(i);
- (v) engaging in the conduct described above in subparagraph 14(j); and

(vi) engaging in other dilatory conduct.

(l) By its overall conduct, including the conduct described above in subparagraph 14(k), Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

Respondent's Coercive Statements and Conduct

(m) In about December 2018 or January 2019, Respondent, by Service Manager Pender, at Respondent's facility, threatened its employees that it would be futile for them to select the Union as their bargaining representative by telling employees that the Union was not going to get in and that the Union was not going to happen.

(n) About March 22, 2019, and again in about mid-April 2019, Respondent, by Profit Center Manager Anderson, at Respondent's facility, instructed employees to report to Respondent on the union activities of other employees.

(o) About April 22 or 23, 2019, Respondent, by Profit Center Manager Anderson, at Respondent's facility, interrogated employees about their union sympathies and the Union's activities.

Respondent's Discriminatory Elimination of the Bargaining Unit

(p) On about August 8, 2019, Respondent:

(i) permanently laid off its union-represented employees Kyle McKellips and Allan Romanowski;

(ii) transferred the work of the bargaining unit described in subparagraph 14(f) from its Franksville facility to non-union facilities owned by Respondent;



(iii) assigned bargaining unit work to individuals employed at the Franksville facility who are not in the bargaining unit; and

(iv) by its actions described above in subparagraphs (i)-(iii), eliminated the entire bargaining unit described above in subparagraph 14(f).

(q) Respondent engaged in the conduct described above in subparagraph 14(p) because employees of Respondent formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

*Respondent's Refusal to Bargain over the Elimination of the Bargaining Unit*

(r) (i) On August 5, 2019, Respondent made the decision to eliminate the bargaining unit and implemented this decision by engaging in the conduct described above in subparagraph 14(p).

(ii) The subjects set forth above in subparagraph 14(r)(i) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for purposes of collective bargaining.

(iii) Respondent engaged in the conduct described above in subparagraph 14(r)(i) without affording the Union an opportunity to bargain with respect to this conduct.

(iv) As a result of the conduct described above in subparagraph 14(r)(i) on August 15, 2019, Respondent terminated the employment of its employees Kyle McKellips and Allan Romanowski.

Sections of the Act Violated

15. By the conduct described above in subparagraphs 14(m)-(o), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. 29 U.S.C. §§ 157 and 158(a)(1).

16. By the conduct described above in subparagraphs 14(p) and (q), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act. 29 U.S.C. § 158(a)(1), (3).

17. By the conduct described above in subparagraphs 14(i), (j), (k), (l), and (r) Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act. 29 U.S.C. § 158(d), (a)(1), (a)(5).

Board and District Court Jurisdiction Over Violations

18. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act. 29 U.S.C. § 152(6) and (7).

19. The unfair labor practices of Respondent described above in paragraphs 14-17 took place within this judicial district.

**Injunctive Relief is Just and Proper**

20. Respondent's unfair labor practices, as described above in paragraphs 14-17, have and are continuing to irreparably harm employees in the exercise of the rights guaranteed them

by Section 7 of the Act. 29 U.S.C. § 157. More particularly, Respondent's unfair labor practices have caused and will continue to cause the following harm:

(a) Respondent's discriminatory elimination of the bargaining unit and the Union's perceived inability to protect employees from being discriminatorily discharged because of their union activity will predictably erode employee support for the Union and with the passage of time, will irreparably chill employees in the exercise of their Section 7 rights, 29 U.S.C. § 157;

(b) Respondent's refusal to bargain in good faith and its unilateral elimination of the bargaining unit as a *fait accompli* will cause employee disaffection, as the Union will be perceived as ineffective in the face of such changes to terms and conditions of employment. This disaffection will undermine the collective-bargaining process because it will convey to employees that the Union is powerless to effectively represent them and will render their selection for a collective-bargaining representative meaningless; and

(c) As a result of Respondent's refusal to bargain in good faith and elimination of the bargaining unit, employees will be deprived of the benefits of collective bargaining and employee support will be irreparably undermined over time as conditions change in the facility without any Union input.

21. An order requiring good faith interim bargaining is necessary to prevent the irreparable erosion of the Union's majority support given Respondent's course of unlawful conduct in this matter. Additionally, such an order is necessary to prevent irreparable harm to employees through their loss of the benefits of collective bargaining during Board litigation.

22. An order requiring restoration of the bargaining unit work is necessary to prevent Respondent from defeating the collective-bargaining process and employees' statutory rights through its illegal conduct. Unless Respondent is forced to reinstate the bargaining unit work and

bargain in good faith, the bargaining unit will be permanently eliminated, and the Union will lose the support needed to bargain effectively when the Board ultimately issues a bargaining order. Restoring the bargaining unit work requires, among other things, transferring certain equipment and operations back to the facility, filling at least three bargaining unit positions with the same terms and conditions of employment that existed as of August 5, 2019, and assigning bargaining unit work to the employees in those positions. This remedy will likely be more burdensome with the passage of time and therefore prompt restoration under an injunction will prevent this likely remedial failure.

23. Unless injunctive relief is immediately obtained, it can fairly be anticipated that employees will permanently and irreversibly lose the benefits of the Board's processes and the exercise of statutory rights for the entire period required for Board adjudication, a harm which cannot be remedied in due course by the Board.

24. The Court's grant of a Section 10(j) injunction will maintain and restore the newly certified Union's legitimate level of support, preserve the efficacy of the Board's final order, preserve the employees' choice of the Union as their bargaining representative, and prevent further undermining of the collective-bargaining process and damage to the Board's remedial powers. 29 U.S.C. § 160(j).

25. There is no adequate remedy at law for the irreparable harm being caused by Respondent's unfair labor practices, as described above in paragraphs 20-23.

26. Granting the temporary injunctive relief requested by Petitioner will cause no undue hardship to Respondent.

27. In balancing the equities in this matter, if injunctive relief is not granted, the harm to the employees, to the public interest, and to the purposes and policies of the Act, outweighs any harm that the grant of injunctive relief will work on Respondent.

28. Upon information and belief, it may be fairly anticipated that unless Respondent's conduct of the unfair labor practices described in paragraphs 14-17 is immediately enjoined and restrained, Respondent will continue to engage in those acts and conduct, or similar acts and conduct constituting unfair labor practices.

29. Upon information and belief and in accordance with the purposes of Section 10(j) of the Act, 29 U.S.C. § 160(j), it is essential, just, proper, and appropriate for the purposes of effectuating the policies of the Act and avoiding substantial, irreparable and immediate injury to such policies, to the public interest, and to Respondent's employees, that Respondent be enjoined and restrained as prayed below, pending final disposition of the matters presently pending before the Board.

### **RELIEF REQUESTED**

WHEREFORE, PETITIONER PRAYS:

1. That the Court issue an Order, directing Respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why, pending final adjudication by the Board of the matters pending before the Board in Cases 18-CA-236643, 18-CA-238989 and 18-CA-247528, a temporary injunction should not issue:

(a) Directing and ordering Respondent to cease and desist from:

(i) Refusing to bargain in good faith with the Union in the following unit: all full-time and regular part-time mechanics, drivers, and foremen, employed by Respondent at profit center 776 in Franksville, Wisconsin,

excluding all other employees, clerical staff, salespeople, managers, guards, and supervisors, as defined in the Act;

(ii) Refusing to meet at reasonable dates and times for bargaining;

(iii) Refusing to bargain about wages, a mandatory subject of bargaining;

(iv) Making unilateral changes in terms and conditions of employment of the unit employees without first providing notice to the Union and bargaining in good faith to agreement or impasse, including by transferring bargaining unit work, assigning bargaining unit work to individuals who are not in the bargaining unit, or laying off members of the bargaining unit;

(v) Discriminating against employees in order to discourage union or protected concerted activity, including taking any measures to eliminate the bargaining unit such as transferring the work of the bargaining unit, assigning bargaining unit work to individuals who are not in the bargaining unit, or laying off bargaining unit members; and

(vi) In any other manner interfering with, restraining or coercing employees in the exercise of their Section 7 rights. 29 U.S.C. § 157.

(b) Ordering and directing Respondent, pending final Board adjudication to:

(i) Recognize the Union as the exclusive collective-bargaining representative of the employees in the Unit;

(ii) Within five (5) days of the issuance of the District Court's order, bargain collectively and in good faith with the Union as the exclusive

representative of the employees in the Unit with respect to wages, hours and other terms and conditions of employment;

(iii) On request, bargain in good faith with the Union on a schedule providing for good-faith bargaining for not less than 24 hours per month and 6 hours per bargaining session, or other schedule to which Respondent and the Union have mutually agreed to, until they reach a complete collective-bargaining agreement or a good-faith impasse in bargaining;

(iv) Within fifteen (15) days of the issuance of the District Court's order, restore the bargaining unit work to the status quo that existed on August 5, 2019, including by transferring back unit work to the Franksville facility, restoring bargaining unit positions, and assigning bargaining unit work to unit employees;

(v) Within five (5) days of the issuance of the District Court's order, post copies of the District Court Order at its Franksville, Wisconsin facility, in all places where notices to employees are normally posted and maintain those postings during the Board's administrative proceeding free from all obstructions and defacements and grant all employees free and unrestricted access to said postings;

(vi) Within ten (10) days of the issuance of the District Court's order, hold a mandatory meeting or meetings through video conference, on work time with the above unit of employees, scheduled to ensure the widest possible participation, at which the District Court's order is to be read to the employees by a responsible management official in the presence of a Board

Agent, or at Respondent's option, by a Board Agent in that official's presence; and

(vii) Within fifteen (15) days of the issuance of the District Court's Decision and Order, file with the District Court and serve upon Petitioner, a sworn affidavit from a responsible official describing with specificity the manner in which Respondent has complied with the terms of the Court's decree, including the locations of the posted documents and the date and time that the order was read to employees.

2. That the Court grant such further relief as may be just and proper.
3. That the Court grant expedited consideration to this petition, consistent with 28

U.S.C. § 1657(a) and the remedial purposes of Section 10(j) of the Act. 29 U.S.C. § 160(j).

Dated at Minneapolis, Minnesota, this 6<sup>th</sup> day of February, 2020.

/s/ Jennifer A. Hadsall  
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