

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

ROME ELECTRICAL SYSTEMS, INC.

and

THREE RIVER ELECTRICAL INC.  
d/b/a THREE RIVERS ELECTRICAL, INC.

Case No. 10-CA-35458

and

ROBERT D. BOLLEN, An Individual

and

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 613

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY TO RESPONDENTS'  
RESPONSES TO COUNSEL FOR THE GENERAL COUNSEL'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT AND TO STRIKE RESPONDENTS' AFFIRMATIVE  
DEFENSES TO COMPLIANCE SPECIFICATION**

Pursuant to the Board's Rules and Regulations and applicable precedent, Counsel for the General Counsel hereby files this Reply to Respondents' Responses to Counsel for the General Counsel's Motion for Partial Summary Judgment and to Strike Respondents' Affirmative Defenses to Compliance Specification. See *D.L. Baker, Inc.*, 330 NLRB 521, fn. 4 (2000).

Introduction

At the outset, it is important to reiterate what the General Counsel is *not* seeking in the Motion for Partial Summary Judgment. Contrary to the Responses of Respondent Three Rivers and Respondent Bollen, we are *not* seeking summary judgment with respect to Paragraphs 1 through 16 of the Backpay Specification.

Rather, in the Motion, we have asked the Board to remand this matter to the Regional Director for Region 10 to conduct a hearing before an administrative law judge limited to the allegations with regard to alter ego, successor, and personal liability issues, as alleged in Paragraphs 1 through 16 of the Specification. See *Best Roofing Co., Inc.*, 304 NLRB 727 (1991). Accordingly, Respondent Three Rivers and Respondent Bollen will be given the forum they assert they have been denied in this case to contest derivative liability allegations pertaining to Respondent Three Rivers' alter ego and successor status, and Respondent Bollen's personal liability.

### Argument

Respondents' Answers, as "amplified" and "clarified," are insufficient under Section 102.56 of the Board's Rules and Regulations. Accordingly, Counsel for the General Counsel maintains that Partial Summary Judgment be granted against all Respondents with respect to the calculations and amounts due from Respondents for backpay, reimbursement to employees, and payments to benefit funds, as set forth in Paragraphs 17 through 61 of the Backpay Specification, as urged in our Motion.<sup>1</sup> As was stated in our initial Motion, there are no significant differences in the initial Answers filed by all three Respondents. Though Respondent Rome has twice "amplified" and "clarified" its initial Answer, this is not the case with respect to the other two Respondents. Neither Respondent Three Rivers nor Respondent Bollen has added any new information in their Responses to amend or "clarify" their initial Answers,<sup>2</sup> except for their contentions that:

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<sup>1</sup>Also, Counsel for the General Counsel maintains that the Board should strike Respondents' Affirmative Defenses as legally insufficient to refute the allegations in the Specification, as set forth in the Motion.

<sup>2</sup>Up until the filing of the instant Responses, only Respondent Rome filed an Amended Answer to "clarify" its initial Answer. See Exhibit L attached to General Counsel's Motion.

- (1) Neither has been afforded a forum to contest alter ego, successor, and personal liability issues; and
- (2) The Board should delay making any determinations in this matter because the Supreme Court has accepted certiorari in a case involving authority of the two-member Board.

As to the first point, Respondent Three Rivers and Respondent Bollen will have their day in court on derivative liability issues, as we have stated above. We believe the second point is meritless, for reasons explained below. Accordingly, inasmuch as Respondent Three Rivers and Respondent Bollen have not amended or “clarified” their initial Answers, partial summary judgment should be granted against them with respect to all amounts claimed in Paragraphs 17 through 61, for the reasons stated in our Motion. See *Horizons Hotel Corporation*, 320 NLRB 1113, 1114 fn. 3 (1996); *Kolin Plumbing Corp.*, 337 NLRB 234, 236 fn. 8 (2001).

Respondent Rome’s Answer, as “clarified” in its Response, continues to be deficient under Section 102.56, as urged in our Motion.<sup>3</sup> The only new defense is an “augmented” defense: Respondent Rome “augments its First Affirmative Defense” by urging the Board to “stay these motions until the Supreme Court rules on the Board’s adjudicative powers” in a different case. In augmenting its First Affirmative Defense in this regard, we do not understand Respondent Rome to be claiming that the current two-member Board lacks authority to make a determination in this case.<sup>4</sup> Indeed, no such claim has ever been made by any of the Respondents at any time during the

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<sup>3</sup> For this reason, as well, if derivative liability exists, Respondent Three Rivers and Respondent Bollen will be bound by Respondent Rome’s failure to provide an adequate Answer to the allegations in Paragraphs 17 through 61 of the Specification. See General Counsel’s Motion, page 8, fn. 7.

protracted compliance investigation in this matter, during which multiple investigative subpoenas were issued to Respondents by the two-member Board. In fact, no such claim is being made by Respondents even *now*. Rather, they ask the Board to be “prudent,” to delay ruling on this Motion “until the Supreme Court rules on the Board’s adjudicative powers.” Taking this argument to its logical extreme, perhaps the Board should just close up shop, and order the General Counsel’s office and the Regional offices to close up shop, as well, until the Supreme Court rules. This is a patently ridiculous notion, yet another disingenuous smokescreen advanced by Respondent Rome, and it should be rejected by the Board.

Next, in the Response, Respondent Rome contends it has complied with Section 102.56 because it has “provided putative damage calculations with end dates of June 2007” in its Amended Answer. This is plainly false. Respondent Rome has not provided *any* damage calculations in its Amended Answer. Rather, Respondent Rome has picked a number out of the air, asserting that its “maximum liability” in this case is “*approximately* \$102,500.” (Emphasis supplied.) What formula has Respondent Rome employed to arrive at this figure? We are not told. What calculations has Respondent Rome made to arrive at this figure (including wage rates and hours worked)? We are not told. What portion of this “approximate maximum liability” is allocated to employee backpay, benefits funds payments obligations, or reimbursement to employees for health care premium payments? We are not told; Respondent has not provided even a clue as to the basis for this approximation. On what specific date in June 2007 did Respondent Rome cease operations? The answer to this question is a moving target; it

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<sup>4</sup> The Board has repeatedly rejected such a defense. See, e.g., *Paint America Services, Inc.*, 352 NLRB 185 (2008); and *Metro Demolition Contracting Corp.*, 354 NLRB No. 48 (2009).

seems as if every time Respondent Rome has submitted a piece of paper in this case, it has provided a different answer.<sup>5</sup>

With respect to backpay due to employee Steven Kight, Respondent Rome provides no alternative figures or computations, simply asserting in its Response that “the computation provided in Paragraphs 19-22 of the Compliance Specification is incorrect.” Likewise, no alternative figures or computations are provided for employee Matthew Owens or Marvin Cabrera. Respondent Rome simply reiterates that the “computations provided in . . . the Backpay Specification” are “incorrect.” Although Respondent Rome provides hints of purported defenses with respect to backpay due to all of the discriminatees, the Response is nonetheless insufficient under Section 102.56. The Rule requires more than hints: a respondent is required to “set forth in detail” the “basis” for its “disagreement” with the General Counsel’s position. Notwithstanding multiple opportunities to do so, Respondent Rome has failed to provide a detailed answer to backpay and reimbursement amounts alleged to be due to employees.

As to other allegations, Respondent Rome continues to disingenuously claim lack of knowledge of facts that are readily available to any employer. In its initial Answer, as to benefits funds payments, Respondent Rome admitted that the “collective bargaining agreements speak for themselves.” See Paragraph 44 of Answer. Yet Respondent Rome continues to assert that information pertaining to benefits funds

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<sup>5</sup> In its recently filed Response, Respondent Rome claims it ceased operations in June, 2007. In its initial Answer filed only a few weeks ago, Respondent Rome claimed it ceased operations at least three months earlier, “in or about the first quarter of 2007.” See paragraph 43 of Respondent Rome’s Answer. A year ago, Respondent Rome’s principal, Robert D. Bollen (also Respondent Three Rivers’ principal) asserted this date was “in or about August, 2007.” See affidavit of Robert Bollen, principal of both Respondent Rome and Respondent Three Rivers (attached as Exhibit A), in which Bollen states that “in or about August, 2007,” he “sadly . . . closed the doors of Respondent Rome.” More recently, in September, 2009, Respondent Rome’s counsel stated the date was some time *after* August, 2007, disputing the General Counsel’s “calculations based on dates after August, 2007.” See letter dated September 8, 2009, from Respondent Rome’s counsel to the Region (attached as Exhibit B).

payments is “not within its knowledge and control,” without explaining why. In fact, Respondent Rome does not claim that it cannot locate the collective bargaining agreements, payroll records, or other documents it would need in order to present alternative payment or interest calculations. See, for example, *Human Development Association*, 344 NLRB 902 (2005). Rather, Respondent Rome simply fails to provide any detailed information and calculations, *even for the period it claims it remained in operation*. Furthermore, Respondent Rome continues to disingenuously deny knowledge of matters after it allegedly ceased operations. However, Robert Bollen, Respondent Rome’s principal, admitted that he, as Respondent Three Rivers’ principal, actually prepared and maintained time sheets for employees in the Three Rivers’ operation.<sup>6</sup> Thus, Respondent Rome cannot truthfully contend it did not have access to records which showed hours worked and rates of pay paid to employees throughout the backpay period. See page 9, fn. 9 of Motion, and Appendix M.

Accordingly, even construing the pleadings herein “in the light most favorable to” Respondents, Respondent Rome’s disingenuous and flimsy assertion of “lack of knowledge” does not adequately explain its failure to meet the specificity requirements of Section 102.56(b). See *Eldeco, Inc.*, 336 NLRB 899 (2001). Nor has Respondent Rome raised any issue of material fact warranting a hearing by pulling an “approximate maximum liability” amount out of the air, without any information, explanation, or calculations.

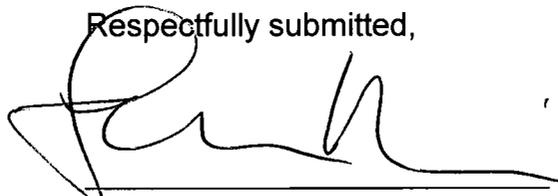
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<sup>6</sup> These time sheets, as well as other payroll records pertaining to Three Rivers employees, were used in the calculation of backpay, reimbursement, and benefit funds payment amounts alleged in the Specification. See Explanatory Notes to Appendix 5 of Specification. All of the documents described in the Notes were readily available to Respondents and, in most instances, were provided by Respondents or their accountants.

For the foregoing reasons and the reasons stated in our Motion, Respondents have failed to comply with the specificity requirements of Section 102.56 in all respects, and have not adequately explained their failure to provide adequate answers to the allegations in Paragraphs 17 through 61 of the Backpay Specification. Furthermore, Respondents' Affirmative Defenses are insufficient as a matter of law to refute these allegations, as we have previously stated. Accordingly, the Board should grant the relief requested in Counsel for the General Counsel's Motion for Partial Summary Judgment (at pages 16 and 17) as to these allegations. See *Ybarra Construction Co.*, 347 NLRB 856 (2006); and *Paolicelli*, 335 NLRB at 883.

Dated at Atlanta, GA, this 1<sup>st</sup> day of December, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lauren Rich', written over a horizontal line.

Lauren Rich  
Kerstin I. Meyers  
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National Labor Relations Board  
Region 10  
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**CERTIFICATE OF SERVICE**

Pursuant to Section 102.113(a), and Section 102.114(b) and (e), I hereby certify that the foregoing Counsel for the General Counsel's Reply in Opposition to Respondents' Responses to the General Counsel's Motion for Partial Summary Judgment and to Strike Portions of Respondents' Answers to Compliance Specification was filed electronically with the Office of Executive Secretary of the National Labor Relations Board, 1099 14<sup>th</sup> Street, NW, Washington, D.C. 20570, and that a copy of the foregoing was also sent electronically to Respondents' Counsel (at [mwebb@brinson-askew.com](mailto:mwebb@brinson-askew.com)) and to Charging Party Counsel (at [nslawsky@gmail.com](mailto:nslawsky@gmail.com)) and by Federal Express Next Day Delivery to the following on this 1<sup>st</sup> day of December, 2009:

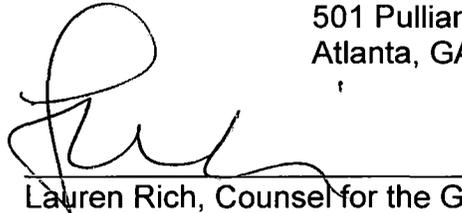
Rome Electrical Systems, Inc.  
323 East First Street  
Rome, GA 30161

Rome Electrical Systems, Inc.  
and Three Rivers Electrical, Inc.  
c/o Robert D. Bollen  
38 Westbrook Drive  
Rome, GA 30165

Robert D. Bollen  
38 Westbrook Drive  
Rome, GA 30165

Three Rivers Electrical, Inc.  
325 East First Street  
Rome, GA 30161

International Brotherhood of  
Electrical Workers, Local 613  
501 Pulliam Street, Suite 250  
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AFFIDAVIT OF DANNY BOLLEN

1.

In or about August, 2007, sadly I, Danny Bollen, President of Rome Electrical Systems, Inc. ("Rome Electric"), closed the doors of Rome Electrical Systems, Inc. ("Rome Electric"), located at 323 East First Avenue, Rome, Georgia, for the final time.

2.

Due in part to the economic downturn, mounting debts, litigation fees and expenses in responding to litigation filed against the company in multiple federal jurisdictions, the company could no longer return a profit and ceased doing business.

3.

On or about July 29, 2008, I, President of Rome Electric, received a copy of a letter dated July 25, 2008, from Morris J. Newman, National Labor Relations Board, to Mark Webb, Rome Electric's legal counsel. Among other things, the letter demanded that Rome Electric conspicuously display "where Notices to Employees are customarily posted," form NLRB-4783.

4.

Since in or about August, 2007, Rome Electric has had no employees.

5.

Rome Electric has no employees in which to provide the information, which the letter of July 25, 2008 demanded be provided, to employees of Rome Electric.

6.

Since in or about August, 2007, Rome Electric has maintained no office in which to post the

225419

Ex. A

0000091

"Notice to Employees" which accompanied the letter of July 25, 2008

7.

Upon information and belief, 323 East First Avenue, Rome, Georgia, is now a Health Spa.

This 28 day of August, 2008.



DANNY BOLLEN, PRESIDENT  
ROME ELECTRICAL SYSTEMS, INC.

Sworn to and subscribed before me  
this 28<sup>th</sup> day of August, 2008.



Notary Public



**Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP**

A Limited Liability Partnership

Attorneys at Law

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\*\*\* also admitted in Fla.Robert M. Brinson, P.C.  
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Joseph M. Seigler, Jr., P.C.  
Thomas D. Richardson  
J. Anderson Davis  
Wright W. Smith  
Mark M. J. Webb  
I. Stewart Duggan, P.C.  
Stephen B. Moseley, P.C.  
David C. Smith, P.C. \*  
Kristy L. Treadaway  
A. Franklin Beacham III  
Bryant G. Speed II \*\*

September 8, 2009

Mr. Morris J. Newman  
Compliance Officer  
National Labor Relations Board  
Region 10  
233 Peachtree Street, NE  
Harris Tower, Suite 1000  
Atlanta, Georgia 30303-1531**Re: Rome Electrical System, Inc.  
Case 10-CA-35458**

Dear Morris:

Rome Electrical System, Inc., which has ceased doing business, would like to voluntarily resolve the "matter", and has been willing to voluntarily resolve the "matter" from the outset, without much success.

In addressing each of the paragraphs of your letter, specifically paragraph 3, and noting that as you have admitted to me not being a lawyer, your purported legal conclusion must be viewed with skepticism. More specifically, Rome Electrical System, Inc. finds paragraphs 3 and 4 of your letter to be fanciful, objectionable, and disputed.

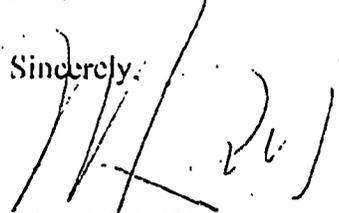
With regard to your calculations, you are aware any claims made following the dissolution of Rome Electrical Systems, Inc. are disputed. Thus, in order to fairly initiate any settlement discussions, my suggestion would be that you reconfigure your calculations to exclude calculations based on dates after August, 2007. Additionally, since you are eminently familiar with the totality of the circumstances

**Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP**

regarding Mr. Bollen, I would again suggest that in an effort to be fruitful, you propose a reasonable sum and method of resolving this disputed conflict. As I will be out of the country through September 20, I shall look to hear from you upon my return. Hopefully, we can work to bring this matter to voluntarily closure.

On behalf of Rome Electrical Systems, Inc., I am

Sincerely,



Mark M. J. Webb

MMJW:jw