

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

CONTINENTAL LINEN SERVICES, INC.

Respondent

and

**CASES 7-CA-52296
7-CA-52715
7-CA-52798**

**CHICAGO and MIDWEST REGIONAL
JOINT BOARD – WORKERS UNITED/SEIU**

Charging Union

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
OPPOSITION TO THE CHARGING UNION'S
MOTION TO WITHDRAW CHARGES**

Counsel for the Acting General Counsel files this opposition to the Charging Union's motion to withdraw charges in the above-captioned cases, and requests that the motion be denied and the Board rule on the exceptions currently before it. In support of this opposition, Counsel for the Acting General Counsel states as follows:

1. On March 24, 2010, Region 7 issued an amended consolidated complaint alleging that the Charging Union was the Section 9(a) representative of the unit employees and that the Respondent violated Section 8(a)(5) of the Act by refusing to recognize and bargain a successor contract with the Charging Union, refusing to process grievances with the Charging Union, refusing to provide information to the Charging Union, and denying Charging Union representatives access to its facility. The complaint further alleges that the Respondent violated Section 8(a)(5) by withholding dues from employees between March 2009, when the Charging Union informed the Respondent that it had disaffiliated from

UNITE HERE, and March 2010 when the 2005-2010 collective bargaining agreement expired, and by failing to remit the dues to the Charging Union and instead escrowing them.

2. On September 15, 2010, Administrative Law Judge Paul A. Bogas issued his decision, concluding, inter alia, that the Charging Union had never become the Section 9(a) representative of the Respondent's employees. Counsel for the Acting General Counsel and the Charging Union filed exceptions to the administrative law judge decision with the Board, and the Respondent filed an Answering Brief to the exceptions. The case has been fully briefed and is pending before the Board.

3. After the case was fully briefed to the Board, the Charging Union and the Respondent entered into a non-Board adjustment, a copy of which is attached (Attachment 1). That settlement states that the Charging Union has disclaimed interest in representing the employees and provides that the Respondent will pay to the Charging Union the \$34,787.73 dues payments that the Respondent withheld from the employees' pay and placed in escrow. The settlement also states, "This action in no way acknowledges the Charging Union as the 9(a) representative," and requires the Charging Union to indemnify the Respondent for any costs or damages the Respondent may incur because of the payment of dues.

4. On January 24, 2011, the Charging Union filed with the Board a Motion to Withdraw Charges. The motion asserts that the Respondent and the Charging Union have

entered into a non-Board settlement agreement that is consistent with the policies of the Act and which warrants withdrawal of the instant charges.

5. Counsel for the Acting General Counsel opposes the motion because the parties' agreement does not resolve the legal issue of whether the Charging Union was the Section 9(a) representative of the Respondent's employees. The Board's resolution of this issue is necessary (1) to determine whether the Respondent's payment to the Charging Union pursuant to the settlement is lawful under Section 8(a)(3), and (2) to prevent possible litigation by the employees against the Respondent to recover dues withheld from their pay and remitted to the Charging Union pursuant to the settlement.

6. First, the Board should determine whether payment to the Charging Union pursuant to the settlement is lawful under Section 8(a)(3). If the Charging Union was the Section 9(a) representative, as the complaint alleges, the payment is lawful. But if the Charging Union was not the Section 9(a) representative, as the Administrative Law Judge concluded, the employees are entitled to reimbursement of the escrowed dues, and the Charging Union will be unjustly enriched by receiving money covering a period during which it was not obligated to perform services for the employees. See generally, *Crown Cork & Seal Co.*, 182 NLRB 657 (1970) (ordering reimbursement of dues withheld pursuant to check-off forms signed after contract commenced between employer and prematurely recognized union); *Cowles Communications, Inc.*, 170 NLRB 1596, 1596 n.3 (1968).

7. Second, a Board decision is needed to prevent potential litigation over the withheld and escrowed funds. The settlement's requirement that the Charging Union indemnify the Respondent for any costs or damages the Respondent may incur because of its payment to the Charging Union appears to anticipate suits by employees to recover those funds. In order to prevail in such suits, the employees will have to establish that the Charging Union was not their Section 9(a) representative. Thus, the central issue in the employees' suits will be the same issue now before the Board. In addition, the Respondent may sue the Charging Union for reimbursement of the money it pays to the employees, whether voluntarily or pursuant to judgments won by employees. Therefore, the settlement, which explicitly avoids resolving the Section 9(a) issue and potentially deprives the employees of funds owed to them, is inconsistent with the policies of the Act. A Board decision in this fully briefed case will obviate the need for such litigation.

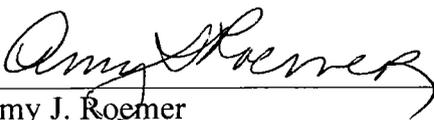
8. Further, the employees should not be required to initiate litigation against the Charging Union or the Respondent in order to resolve an issue that the parties have already litigated. By issuing a complaint and litigating the matter, the General Counsel was fulfilling his role under the Act, seeking to determine the rights and obligations of the employees, the Respondent, and the Charging Union.

9. The settlement, in part, gives the Respondent what it would have obtained if the Board were to affirm the administrative law judge, and gives the Charging Union what it would have obtained if the Board were to reverse the administrative law judge. Specifically, the settlement leaves the Respondent with a workforce that is not represented by the

Charging Union and provides for a payment that the Charging Union would have been entitled to only if it was the employees' Section 9(a) representative. The employees, however, are left without representation and without the money they paid for representational services. In view of the Charging Union's disclaimer of interest in representing them, the employees are, at the very least, entitled to a resolution of their monetary interests without having to assume the burdens of initiating additional litigation. In sum, the parties' settlement is repugnant to the purposes and policies of the Act. *Independent Stave Co.*, 287 NLRB 740 (1987).

For the reasons advanced above, the undersigned respectfully requests that this opposition be granted, the Charging Union's request to withdraw charges and remand the cases to the Regional Director be denied, and the Board issue an order that will resolve the Charging Union's Section 9(a) status to prevent further litigation.

Dated at Detroit, Michigan, this 11th day of February 2011.



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**DOCUMENTATION OF DISCLAIMER AND
INDEPENDENT SETTLEMENT AGREEMENT**

Settlement Agreement made this 20th day of January 2011 by and between Chicago and Midwest Regional Joint Board-Workers United/SEIU ("Joint Board"), and Continental Linen Services, Inc. ("CLS").

WHEREAS, Chicago and Midwest Regional Joint Board-Workers United/SEIU ("Joint Board"), voluntarily communicates to Continental Linen Services, Inc. ("CLS") the Joint Board's unequivocal and unconditional disclaimer of any interest in acting as the bargaining representative under the National Labor Relations Act ("the Act") for the following unit of CLS employees:

All production employees, including plant clerical employees and janitors, employed by CLS at its 4200 Manchester Road, Kalamazoo, Michigan facility; but excluding all office clerical employees, salespersons, truck drivers, skilled maintenance employees, and guards and supervisors as defined in the Act.

WHEREAS, the Joint Board's decision to disclaim interest in acting as the bargaining representative above, and the communication itself, were completely voluntary acts.

WHEREAS, notwithstanding this disclaimer of interest, Joint Board and CLS have outstanding issues arising out of a labor dispute between the parties, and

WHEREAS, to avoid the costs of further litigation and to bring about stability to the labor relations situation involving the bargaining unit employees as defined above, the parties have reached a settlement on issues between them and have agreed as follows:

1. **Withdrawal of Charges.** The Joint Board will submit to the Regional Director for Region 7 a request to withdraw the charges that underlie Case No. CA-52296, as well as file a Motion with the NLRB consistent with NLRB Rules and Regulations to remand the case to the Regional Director to take action consistent with the Withdrawal of Charges. The Joint Board further agrees that it will take no action inconsistent with the request to withdraw Charges so as to prompt Region 7, the General Counsel, or the NLRB to refuse to consent to the withdrawal of the charges that underlie Case No. CA-52296.
2. **Payment of Dues.** Pursuant to 29 U.S.C. § 186(c), and consistent with the letter received by CLS dated September 2, 2010, and signed by UNITE HERE and Workers United representatives, as well as the Joint Board's and UNITE HERE's representation that its settlement agreement with UNITE HERE entitles the Joint Board to the dues, CLS will provide the Joint Board with all dues it collected and escrowed from March of 2009 through the expiration of the relevant collective bargaining agreement (i.e., March 1, 2010) in the amount of \$34,787.73 within one (1) calendar week of executing this agreement. This action in no way acknowledges the Joint Board as the 9(a) representative of CLS's laundry unit employees. The Joint Board agrees to indemnify CLS for any costs, including, but not limited to, attorney fees and other legal fees and damages, should CLS incur any costs because of this payment of dues.

3. **Mutual Release.** In further consideration of Paragraphs 2 and 3, the Joint Board waives, releases, and discharges CLS and its principals, agents, representatives and personnel, and all related entities, affiliates and subsidiaries, from any claims or allegations based on any events that occurred before the execution of this letter, including but not limited to any claims under federal, state or local laws. CLS waives, releases, and discharges the Joint Board and its principals, agents, representatives and personnel, and all related entities, affiliates and subsidiaries in the same manner. This is intended to be a complete, mutual release of claims.
4. **Disclaimer of Interest.** The Joint Board's disclaimer of interest described above was unconditional and therefore is not subject to any future decision of the National Labor Relations Board ("NLRB") in Case No. CA-52296 (which includes Case Nos. 7-CA-52296, 7-CA-52715, and 7-CA-52798).
5. **Entire Agreement.** The parties acknowledge that this writing is the entire agreement between them on this subject.
6. **Modification.** This Agreement can only be modified in writing signed by all undersigned parties.
7. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts and when so executed by each party shall be the parties' agreement.
8. **Acknowledgment.** The parties have read this document, consulted with their respective attorney(s) about it, fully understand it, and agree to interpret it according to its plain meaning.

Chicago and Midwest Regional Joint Board
Workers United/SEIU

Dated: _____, 2011

By: _____

Its: _____

Continental Linen Services, Inc.

Dated: 1-21-_____, 2011

By: Ronald J. Visher

Its: Chief Executive Officer

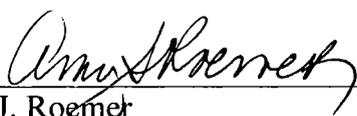
CERTIFICATE OF SERVICE

I certify that on the 11th day of February 2011, I filed the **COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO THE CHARGING UNION'S MOTION TO WITHDRAW CHARGES** via e-file and a copy was served electronically (email) on the following parties of record:

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