UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INSULATION MAINTENANCE &
CONTRACTING, LLC

and **Cases 28-CA-23198**
28-CA-23272
28-CA-23316

LAS VEGAS INSULATORS LOCAL 135, affiliated with
INTERNATIONAL ASSOCIATION OF HEAT AND
FROST INSULATORS & ALLIED WORKERS, AFL-CIO

ACTING GENERAL COUNSEL'S STATEMENT IN SUPPORT OF MOTIONS FOR DEFAULT JUDGMENT AND ISSUANCE OF DECISION AND ORDER

I. INTRODUCTION

In response to the Notice to Show Cause issued by the National Labor Relations Board (Board) on May 19, 2011, the Acting General Counsel (General Counsel) states that it seeks a default judgment and issuance of a Board Decision and Order against Respondent on the ground that despite having had ample time to do so, Respondent has failed to comply with any of the terms of the bilateral informal Board Settlement Agreement (Agreement) upon which the General Counsel's Motions for Default Judgment and Issuance of Decision and Order (Motion) are based.[1] Accordingly, and for the reasons set forth below, the General Counsel respectfully requests that the Board grant the General Counsel's Motion and expeditiously issue a Decision and Order requiring Respondent to comply with the terms of the Agreement, including by posting a Notice to Employees, making the eight named discriminatees whole by

[1] In its Notice to Show Cause, the Board stated that on May 18, 2011, "the Acting General Counsel filed with the Board a Motion for Default Judgment on the ground that the Respondent has failed to file an answer to the Amended Second Consolidated Complaint and Notice of Hearing." The General Counsel respectfully notes that it filed its Motion on May 17, 2011, on the ground that Respondent had triggered the default provisions of a bilateral informal Board Settlement Agreement by failing to comply with the terms of this settlement agreement despite Respondent's clear agreement to do so as manifested in that agreement.

the payment of the backpay amounts specified in the Agreement, with interest, and taking the other action provided for in the Agreement.

II. FACTUAL BACKGROUND

Upon charges and amended charges filed by the Union against Respondent on September 23 and 29, 2010; November 22, 2010; December 29 and 30, 2010; and February 8, 2011, the General Counsel, by the Regional Director for Region 28 (Regional Director), on February 8, 2011, issued an Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing, and on February 15, 2011, issued an Amended Second Consolidated Complaint and Notice of Hearing (Consolidated Complaint) alleging, in pertinent part, that:

a. Respondent violated Section 8(a)(1) and (3) of the Act by discharging its employees David Hernandez, Chad Evans, Hugo Ramirez-Justo, Carlos Pineda, Edwin Flamenco, Rafael Izquierdo, Jorge Poblete-Lopez, and Miguel Molina-Mier; and

b. Respondent violated Section 8(a)(1) of the Act by orally promulgating overly-broad and discriminatory rules; threatening its employees with unspecified reprisals, with discharge, and that it was futile to support the Union; interrogating its employees about their Union sympathies, affiliation, and support and their Union and other concerted activities; engaging in surveillance of its employees' Union and concerted activities; creating the impression among employees that their Union and concerted activities were under surveillance by Respondent; promising its employees job opportunities to dissuade them from supporting the Union; and disparaging the Union in order to discourage employees from supporting or assisting the Union.

On March 3, 2011, the Acting Regional Director approved the Agreement. The Agreement required Respondent, among other undertakings, to post a Notice to Employees; to pay by April 1, 2011, a specified amount of backpay to the discriminatees named in the Consolidated Complaint; and expunge material from its files regarding their discharges. The Agreement also specified that if Respondent failed to comply with its terms, and after 14 days' notice from the Regional Director of such non-compliance without remedy by Respondent, the General Counsel could reissue the Consolidated Complaint; Respondent's answer to the Consolidated Complaint would be deemed withdrawn; the allegations of the reissued Consolidated Complaint would be deemed admitted; and the only issue which Respondent could raise before the Board is whether Respondent defaulted on the terms of the Agreement.

After the Compliance Officer for Region 28, on behalf of the General Counsel, informed Respondent's legal counsel on April 12, 2011, of Respondent's non-compliance with the Agreement, Respondent continued to fail to take any action required by the Agreement. The General Counsel, by the Regional Director, reissued the Consolidated Complaint on May 17, 2011, and filed the Motion on the same date.[2]

To date, Respondent has failed to pay any backpay or otherwise comply with any of the terms of the Agreement.

III. ARGUMENT

The Agreement's default clause provides that in the event of the Respondent's non-compliance with any of the Agreement's terms, Respondent understood that its answer to the Consolidated Complaint would be deemed withdrawn, that the General Counsel would reissue

[2] Respondent's counsel notified the Regional Director and the Board on May 6 and 19, 2011, respectively, that counsel and his firm were withdrawing as counsel for Respondent effective May 6, 2011.

the Consolidated Complaint, that the allegations of the reissued Consolidated Complaint would be deemed admitted, and that the only issue which Respondent could raise before the Board was whether Respondent had defaulted on the terms of the Agreement. The Board has explicitly approved such default provisions and enforced them. See *Ernest Lee Tile Contractors, Inc.*, 330 NLRB No. 61 (2000) (enforcing default language despite partial compliance with settlement agreement); *Tuv Taam Corp.*, 340 NLRB 756 (2003); *Chicago Parking Co., Inc.*, 356 NLRB No. 72 (January 11, 2011).

Even assuming that Respondent has chosen not to retain legal counsel after Respondent's former counsel withdrew his representation of Respondent, Respondent's lack of legal representation does not excuse its failure to comply with the terms of the Agreement. See, e.g., *Newark Performing Arts Corp.*, 323 NLRB 1297, 1297 (1997) (failing to retain labor counsel insufficient to show good cause for failing to file a timely answer to the complaint where region previously had informed respondent of its obligation to answer the complaint and that failure to timely answer the complaint would result in the filing of a motion for summary judgment against respondent).

In the instant case, more than three months have passed since Respondent signed the Agreement, yet Respondent has failed to fulfill any of its obligations under the Agreement. Despite the Compliance Officer's notification to Respondent of its non-compliance with the Agreement, Respondent has given no indication that it intends to comply with any part of it or argue that it did comply with it. Moreover, to date Respondent has not filed a response to the Board's Notice to Show Cause. Based on the foregoing, it is appropriate to enforce the terms of the Agreement.

Based on the foregoing, the General Counsel respectfully requests that the Board grant the relief sought by the General Counsel's Motion.

Dated at Phoenix, Arizona, this 2nd day of June 2011.

Respectfully submitted,

/s/ Johannes Lauterborn

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CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S STATEMENT IN SUPPORT OF MOTIONS FOR DEFAULT JUDGMENT AND ISSUANCE OF DECISION AND ORDER in INSULATION MAINTENANCE & CONTRACTING, LLC, Cases 28-CA-23198 et al., was served by E-Gov, E-Filing, E-Mail and Overnight Delivery via United Parcel Service, on this 2nd day of June 2011, on the following:

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