

TO: Lester A. Heltzer
Office of the Executive Secretary

FROM: Irving E. Gottschalk, Regional Director (Jy)
Region 30 – Milwaukee

DATE: December 13, 2011

RE: Esperanza Unida, Inc.
Case 30-CA-18996

FORMAL SETTLEMENT STIPULATION TRANSMITTAL MEMORANDUM

Submitted for the Board's approval is the Formal Settlement Stipulation in the above-captioned case.¹ The Stipulation was executed by Respondent's Executive Director and by Charging Party's counsel on December 12, 2011. The Regional Director approved the Stipulation on December 13, 2011.

The case continues a pattern of Respondent's retaliation against employees for engaging in protected concerted activities. On December 3, 2010, Charging Party Voces de la Frontera filed a charge in Case 30-CA-18815 alleging that Respondent unlawfully terminated employees José Toledo and Nydia Millan because they engaged in protected concerted activities. The Region issued a Complaint and Notice of Hearing in Case 30-CA-18815 on February 28, 2011. At the hearing in that matter, on April 27, 2011, Respondent entered into an informal settlement agreement, which, among other things, provided for Mr. Toledo and Ms. Millan's reinstatement and full back pay to be paid according to an installment schedule.

On May 26, 2011 the Charging Party filed the charge in the instant case, 30-CA-18996, alleging that Respondent unlawfully promulgated new rules and laid off Mr. Toledo in violation of Sections 8(a)(1) and (4) of the Act. The Charging Party later withdrew the allegation concerning Mr. Toledo's layoff and the Region issued a Complaint and Notice of Hearing on September 30, 2011, alleging that Respondent unlawfully promulgated and maintained a new cell phone policy, announced a new lunch policy to Mr. Toledo and questioned Mr. Toledo regarding his fitness for duty, in retaliation for employees' protected concerted activities and because Mr. Toledo participated in the investigation of unfair labor practice charges and testified in an unfair labor practice proceeding before an administrative law judge.

As the Region settled the charge in 30-CA-18815 with an informal settlement agreement, only to have Respondent continue its retaliation against employees for engaging in protected concerted activities, the Region insisted on

¹ Also attached are the charge and Complaint and Notice of Hearing issued on September 30, 2011, which constitute the record in this matter.

a formal settlement in Case 30-CA-18996. The Region opted not to set aside the prior informal settlement agreement as Respondent has been complying with the back pay installment schedule. Instead, the Region sought broad injunctive language as set forth in Section 1(d) of the Order.

The Stipulation was tailored to meet the needs of the parties in the following respects: The footnote to section 1(b) of the Order notes that if there is any question regarding Mr. Toledo's fitness for duty, Respondent will not question him without prior approval of the Regional Director for Region 30. The footnote was added at the request of Respondent, which noted that Mr. Toledo had a history of emotional issues that might impact his ability to perform his job duties at some later date.² Section 2(a) of the Order requires Respondent to give assurances to employees that the cell phone policy implemented on or about April 29, 2011, will not be discriminatorily promulgated or maintained, rather than requiring Respondent to rescind the policy. The Regional Director did not find the policy on its face to be unlawful but only that it was implemented unlawfully. Section 2(a) addresses Respondent's need to maintain legitimate safety rules in its workplace while remedying the alleged unlawful implementation of the cell phone policy. Finally, the footnote to Section 2(b) of the Order notes that it does not prohibit Respondent from promulgating a non-discriminatory, non-retaliatory lunch break policy. The footnote addresses Respondent's need to ensure that various areas of its facility are properly manned in a non-discriminatory, non-retaliatory manner.

The cease and desist, affirmative provisions and Notice posting fully remedy the alleged violations.

Parties:

Thomas E. Hayes, Esq.
161 W. Wisconsin Avenue, Suite 3032
Milwaukee, WI 53203

Robert Miranda, Executive Director
Esperanza Unida, Inc.
1329 W. National Avenue
Milwaukee, WI 53204

Mark A. Sweet, Esq.
Law Offices of Mark A. Sweet, LLC
2510 E. Capitol Drive
Milwaukee, WI 53211

Voces de la Frontera
1027 S. 5th Street
Milwaukee, WI 53204

Attachments

² It was undisputed that in 2010, Mr. Toledo was hospitalized for emotional issues.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 30**

ESPERANZA UNIDA, INC.

and

Case 30-CA-18996

VOCES DE LA FRONTERA

FORMAL SETTLEMENT STIPULATION

I. INTRODUCTION

Through this formal settlement stipulation, the undersigned parties to this proceeding agree that, upon approval of this stipulation by the Board, a Board Order in conformity with its terms will issue and a court judgment enforcing the Order will be entered. The parties also agree to the following:

II. JURISDICTION

- 1) Esperanza Unida, Inc. (Respondent) is a corporation with its principal office located in Milwaukee, Wisconsin. It is engaged in the operation of a training center and a day care center at its 1329 W. National Avenue, Milwaukee, Wisconsin and 611 W. National Avenue Milwaukee, Wisconsin facilities, respectively.
- 2) In conducting its operations in Milwaukee, Wisconsin during the past one-year period ending September 30, 2011, Respondent derived gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$5,000 directly from points located outside the State of Wisconsin.

- 3) Respondent is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

III. PROCEDURE

- 1) FILING AND RECEIPT OF CHARGE. On May 26, 2011, Voces de la Frontera (Charging Party) filed a charge in Case 30-CA-18996, which was served on Respondent on or about May 26, 2011. Respondent acknowledges receipt of the charge.
- 2) ISSUANCE OF COMPLAINT. On September 30, 2011, the Regional Director for Region 30 of the Board issued a Complaint and Notice of Hearing in Case 30-CA-18996, alleging that Respondent violated the National Labor Relations Act. Respondent and the Charging Party each acknowledge receipt of a copy of the Complaint and Notice of Hearing, which was served by certified mail on September 30, 2011.
- 3) WAIVER. All parties waive the following: (a) filing of answer; (b) hearing; (c) administrative law judge's decision; (d) filing of exceptions and briefs; (e) oral argument before the Board; (f) the making of findings of fact or conclusions of law by the Board; and (g) all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.
- (4) THE RECORD. The entire record in this matter consists of the following documents: this stipulation, the charge and the Complaint and Notice of Hearing. Copies of the charge and Complaint and Notice of Hearing are attached as exhibits A and B.

(5) ENTIRE AGREEMENT. This stipulation constitutes the entire agreement between the parties and there is no agreement of any kind, verbal or otherwise, that alters or adds to it, except that it is understood that the signing of the stipulation does not constitute an admission that Respondent violated the Act.

(6) SCOPE OF THE STIPULATION AND RESERVATION OF EVIDENCE. This Stipulation settles only the allegations in the above-captioned case and does not constitute a settlement of any other cases or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this stipulation, regardless of whether those matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case for any relevant purpose in any litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence.

(7) EFFECTIVE DATE. This stipulation is subject to the approval of the Board and it does not become effective until the Board has approved it. The Regional Director will file with the Board this stipulation and the documents constituting the record as described above. Once the Board has approved the stipulation, Respondent will immediately comply with the provisions of the order as set forth below.

IV. ORDER

Based on this stipulation and the record as described above, and without any further notice of proceedings, the Board may immediately enter an order providing as follows:

Respondent, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discriminatorily promulgating and maintaining the cell phone policy implemented on or about April 29, 2011;

(b) Questioning José Toledo (Toledo) about his fitness for duty;¹

(c) Promulgating and maintaining the lunch break policy announced to Toledo on or about May 17, 2011;

(d) Discharging or otherwise discriminating against any employee because they engaged in protected concerted activities or because they filed unfair labor practice charges and/or testified before the NLRB; and

(e) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to engaged in concerted activities for the purpose of mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days of the approval of this Stipulation, Respondent will give employees assurances that the cell phone policy implemented on or about April 29, 2011, will not be discriminatorily promulgated or maintained, and notify employees in

¹ In the event there is any question regarding Toledo's fitness for duty, Respondent will not question him without prior approval of the Regional Director of Region 30.

writing that this has been done, with a copy of such written notice to be provided to the Regional Director of Region 30;

(b) Within 14 days of the approval of this Stipulation, rescind the lunch break policy announced to Toledo on or about May 17, 2011, and notify Toledo in writing that this has been done, with a copy of such written notice to be provided to the Regional Director of Region 30;²

(c) Within 14 days of service by the Region, post at its 1329 W. National Avenue, Milwaukee, Wisconsin and 611 W. National Avenue, Milwaukee, Wisconsin facilities, copies of the attached notice marked Appendix C. Copies of the notice, in both English and Spanish, on forms provided by Region 30, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Respondent will take reasonable steps to ensure the notices are not altered, defaced or covered by any other material. In addition, Respondent shall duplicate and mail, at its own expense, a copy of the notice in both English and Spanish to all current employees and former employees employed by Respondent at any time since April 29, 2011; and

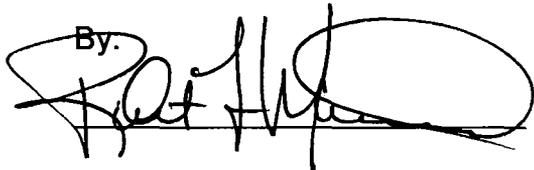
(d) Within 21 days after Service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

² Nothing in Paragraph 2(b) prohibits Respondent from promulgating a non-discriminatory, non-retaliatory lunch break policy.

V. ENFORCEMENT OF ORDER

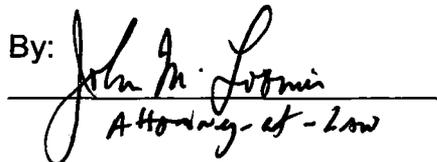
The United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its judgment enforcing the Order of the Board in the form set forth above. Respondent waives all defenses to the entry of judgment, including compliance with the order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words set forth above. However, Respondent shall be required to comply with the affirmative provisions of the Board's Order after entry of the judgment only to the extent it has not already done so.

Esperanza Unida, Inc.
Respondent

By: 

12-12-2011
Date

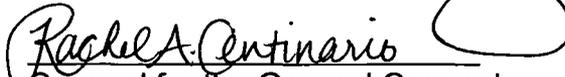
Voces de la Frontera
Charging Party

By: 
Attorney-at-Law

December 12, 2011
Date

Approval

Recommended: 


Rachel A. Centinario
Counsel for the General Counsel
National Labor Relations Board
Region 30
310 W. Wisconsin Avenue, Suite 700
Milwaukee, WI 53203

APPROVED:

 12/13/11
Regional Director, NLRB Region 30, on behalf of
Office of the General Counsel
National Labor Relations Board
Washington, D.C. 20570

Appendix C

**PURSUANT TO STIPULATION PROVIDING FOR A
BOARD ORDER AND CONSENT JUDGMENT OF ANY APPROPRIATE UNITED
STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

- * Form, join or assist a union;
- * Choose representatives to bargain with us on your behalf;
- * Act together with other employees for your benefit and protection;
- * Choose not to engage in any of these protected activities

WE WILL NOT do anything which interferes with, is a reprisal for, or which coerces or restrains you regarding these rights. More specifically,

You have the right to discuss your wages, hours and other terms and conditions of employment. You also have the right to file unfair labor practice charges and participate in National Labor Board proceedings. **WE WILL NOT** make or maintain rules about cell phone usage or lunch breaks because you have exercised these rights.

WE WILL NOT question you about your fitness for duty because you have discussed your wages, hours or other terms or conditions of employment and/or because you filed unfair labor practice charges and participated in National Labor Relations Board proceedings.

WE WILL NOT discharge or otherwise discriminate against you because you engaged in protected concerted activities or because you filed unfair labor practice charges and/or testified before the NLRB

WE WILL, within 14 days of the approval of this Stipulation, give you assurances in writing that the cell phone policy implemented on or about April 29, 2011, will not be discriminatorily promulgated or maintained, and **WE WILL** provide a copy of such written assurances to the Regional Director of Region 30.

A handwritten signature in black ink, appearing to be 'J m J', located in the bottom right corner of the page.

FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
 NATIONAL LABOR RELATIONS BOARD
 CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 30-CA-18996	Date Filed 11 May 26, 2011

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Esperanza Unida	b. Tel. No. (414)671-0251
	c. Cell No. () -
	f. Fax No. (414)383-7392
	g. e-Mail
d. Address (Street, city, state, and ZIP code) 1329 West National Avenue Milwaukee WI 53204-	e. Employer Representative Robert Miranda Executive Director
	h. Number of workers employed 20
i. Type of Establishment (factory, mine, wholesaler, etc.) training center	j. Identify principal product or service job training/child care
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1)(A) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) See attached.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Voces de la Frontera (on behalf of employees of Esperanza Unida, Inc.)	
4c. Address (Street and number, city, state, and ZIP code) 1027 South 3th Street Milwaukee WI 53204-	4a. Tel. No. (414)643-1620
	4b. Cell No. () -
	4d. Fax No. (414)643-1621
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>Mark A. Sweet</u> (signature of representative or person making charge)	Mark A. Sweet, Attorney (Print type name and title or office, if any)
2510 East Capitol Drive Milwaukee WI 53211-	Tel. No. (414)332-2255
	Office, if any, Cell No. (414)332-2255
	Fax No. () - 414-332-2275
	e-Mail msweet@unionyeslaw.com
	5-26-11 (date)

RECEIVED
 NLRB
 REGION 30
 MAY 26 PM 2:01
 MILWAUKEE, WI

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

30-2011-0575

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 161 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Beginning on or about May 10, 2011, the Employer, by its officers, agents and representatives, imposed more onerous working conditions upon its employee, Jose Toledo, including those set forth below, in retaliation for his protected concerted activity and/or because he filed charges under the Act:

- (a) a new cell phone policy;
- (b) a new lunch policy; and
- (c) a new fitness for duty policy.

On or about May 20, 2011, the Employer, by its officers, agents and representatives, selected Jose Toledo for layoff and laid him off in retaliation for his protected concerted activities and/or because he filed charges under the Act.

RECEIVED
NLRB
MAY 26 PM 2:01
MILWAUKEE, WI
REGION 30

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

ESPERANZA UNIDA, INC.

and

Case 30-CA-18996

VOCES DE LA FRONTERA

COMPLAINT AND NOTICE OF HEARING

Voces de la Frontera (on behalf of employees of Esperanza Unida, Inc.) (Charging Party), has charged that Esperanza Unida, Inc. (Respondent) has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq. (Act). Based on this charge, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (Board), issues this Complaint and Notice of Hearing and alleges as follows:

1. The original charge in this proceeding was filed by the Charging Party on May 26, 2011, and a copy was served on Respondent by regular mail on or about that same date.
2. (a) At all material times, Respondent, a corporation, has been engaged in the operation of a training center and a day care center in Milwaukee, Wisconsin.
(b) During the past calendar year, Respondent, in conducting its operations described above in subparagraph 2(a), derived gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$5,000 directly from points located 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), 2(6), and 2(7) of the Act.

3. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act.

Robert Miranda	-	Executive Director
John Anderson	-	Associate Director
Evelyn Alicea	-	Auto Shop Manager
Taneeka Smith	-	Director of Daycare

4. On or about April 29, 2011, Respondent, by Miranda, promulgated and since then has maintained a rule prohibiting the use of personal cell phones on company premises during company time.

5. (a) Respondent promulgated and maintained the rule described above in paragraph 4 to discourage its employees from engaging in protected, concerted activities and/or because its employees, including José Toledo, engaged in protected, concerted activities.

(b) Respondent engaged in the conduct described above in paragraph 4 because Toledo participated in the investigation of unfair labor practice charges and testified at an unfair labor practice hearing before an administrative law judge.

6. On or about May 10, 2011, Respondent, by Miranda, questioned Toledo about his fitness for duty.

7. (a) Respondent engaged in the conduct described above in paragraph 6 to discourage its employees from engaging in protected, concerted activities and/or because its employees, including Toledo, engaged in protected, concerted activities.

(b) Respondent engaged in the conduct described above in paragraph 6 because Toledo participated in the investigation of unfair labor practice charges and testified at an unfair labor practice hearing before an administrative law judge.

8. On or about May 17, 2011, Respondent, by Anderson, announced to Toledo that his lunch break was from noon to 1:00 p.m. and that regardless of what time he left for lunch, he had to be in the shop at 1:00 p.m.

9. (a) Respondent promulgated and maintained the rule described above in paragraph 8 to discourage employees from engaging in protected, concerted activities and and/or because its employees, including Toledo, engaged in protected, concerted activities.

(b) Respondent engaged in the conduct described above in paragraph 8 because Toledo participated in the investigation of unfair labor practice charges and testified at an unfair labor practice hearing before an administrative law judge.

10. By the conduct described above in paragraphs 5(a), 7(a) and 9(a), 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.

11. By the conduct described above in paragraphs 5(b), 7(b) and 9(b), Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

12. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before October 14, 2011, or postmarked on or before October 13, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

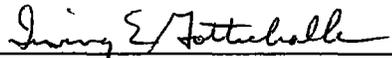
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of

electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on Tuesday, November 29, 2011, at 9:00 a.m. at the National Labor Relations Board Regional Office, 310 West Wisconsin Avenue, Suite 700W, Milwaukee, Wisconsin, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Milwaukee, Wisconsin on September 30, 2011.



Irving E. Gottschalk, Regional Director
National Labor Relations Board
Thirtieth Region
310 West Wisconsin Avenue, Suite 700W
Milwaukee, WI 53203

**NATIONAL LABOR RELATIONS BOARD
NOTICE****C&NOH, 9/30/2011****Case 30-CA-18996**

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown and the following requirements are met:

- 1) *The request must be in writing. An original and two copies must be served on the Regional Director;*
- 2) *Grounds thereafter must be set forth in **detail**;*
- 3) *Alternatives dates for any rescheduled hearing must be given;*
- 4) *The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and*
- 5) *Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.*

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL

THOMAS E. HAYES, ESQ.
161 W WISCONSIN AVE, STE 3032
MILWAUKEE, WI 53203-2602

MARK A. SWEET, ESQ
LAW OFFICES OF MARK A. SWEET, LLC
2510 E CAPITOL DR
MILWAUKEE, WI 53211-2136

REGULAR MAIL

ROBERT MIRANDA, EXECUTIVE DIRECTOR
ESPERANZA UNIDA
1329 W NATIONAL AVE
MILWAUKEE, WI 53204-2115

MARK SWEET, ESQ.
VOCES DE LA FRONTERA (ON BEHALF OF
EMPLOYEES OF ASHLEY FURNITURE
INDUSTRIES, INC.
1027 S 5TH ST
MILWAUKEE, WI 53204-1734

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.