UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 12
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December 27, 2011

[redacted]
EGAN, LEV & SIWICA, P.A.
PO BOX 2231
ORLANDO, FL 32802-2231

Re: Eulen America
Case 12-CA-026948

Dear M[redacted]:

We have carefully investigated and considered your charge that EULEN AMERICA has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons.

The charge alleges, in substance, that on or about October 1, 2010, the Employer replaced Quality Aircraft Services, Inc. (QAS) as the provider of baggage handling and sky cap services at the Miami International Airport and refused to hire a majority of the bargaining unit members formerly employed by QAS because of their union membership. The charge also alleges that the Employer has refused to recognize and bargain with Transport Workers Union, Local 525 (the Union), which represented the former QAS employees at issue.

The investigation established that the Employer was awarded a contract by American Airlines on or about September 13, 2010, to perform the baggage handling and skycap work at Concourse E of Miami International Airport starting on October 1, 2010. QAS employed individuals in the same capacities until the end of September 2010. I have not determined the issue of whether the Employer is an employer with the meaning of the National Labor Relations Act (NLRA), or is subject to the Railway Labor Act, and have considered the merits of this charge, assuming for the sake of argument that the Employer is an employer with the meaning of the NLRA.

With respect to the Employer's alleged unlawful refusal to hire former QAS employees, the investigation revealed that upon being awarded the Concourse E work, the Employer solicited QAS employees to apply for work with the Employer. Moreover, the Employer, which already employed a large workforce performing the same or similar functions at other locations in Miami International Airport, had less than 3 weeks to hire a workforce for Concourse E, and it transferred and/or added hours of work to the schedules of many of its existing employees in order to cover the Concourse E work. Those employees who had already been on the Employer's payroll constituted the majority of its Concourse E workforce as of October 1, 2010. Moreover, the Employer hired approximately 13 former QAS employees as a part of its workforce of approximately 78 employees who began working at Concourse E. It appears that

the Employer only hired approximately four employees from sources other than its own workforce or the former QAS workforce, as part of its initial complement of approximately 78 baggage handlers and skycaps working at Concourse E on October 1, 2010.

There is no evidence in the Employer's hiring records that supports a finding that the Employer discriminated against former QAS employees because of their union membership or activities. Although there is some evidence that a representative of the Employer informed a Union representative that the Employer had done most of its hiring and did not need to hire many former QAS employees, and did not "need" the Union, it appears that the Employer's representative was only making a statement of fact, and there is insufficient evidence to establish that the Employer expressed anti-union animus. For these reasons, there is insufficient evidence to establish that the Employer refused to hire any former QAS employees because of their union membership or activities, or in order to avoid an obligation to recognize and bargain with the Union.

With respect to the Employer's alleged unlawful refusal to recognize and bargain with the Union, it appears that the Union demanded recognition as the bargaining agent of the Employer's employees at Concourse E in late September 2010, before the Employer began performing the work. The Union's recognition demand, although premature, was continuing in nature. *Fall River Dyeing and Finishing Corp. v. NLRB,* 482 U.S. 27 (1987). As noted above, as of October 1, 2010, its first day of work on the Concourse E contract, the Employer employed approximately 78 baggage handlers and skycaps on that job, of whom approximately 13, less than a majority, were former QAS employees. Ultimately, as of on or about January 28, 2011, the Employer's Concourse E workforce reached a peak of approximately 109 employees in the same two job classifications of baggage handlers and skycaps. Thus, as of October 1, 2010, the Employer employed over 71 per cent of its ultimate full complement of employees working on that contract, and the Employer employed employees in 100 per cent of the job classifications working on that contract. Therefore, on October 1, 2010, the Employer employed a representative complement of its full workforce, and because the Union did not enjoy majority status among the workforce as of that time the Employer did not have an obligation to recognize or bargain with the Union.[1]

In these circumstances, I am refusing to issue a complaint in this matter.

[1] It is also noted that although the Employer subsequently hired additional former QAS employees, it appears that they have never comprised a majority of its Concourse E workforce.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on January 10, 2012. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than January 9, 2012.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before** January 10, 2012. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

ROCHELLE KENTOV
Regional Director

Enclosure

cc GENERAL COUNSEL
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