



United States Government
NATIONAL LABOR RELATIONS BOARD
Region Four
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April 2, 2012

Lester A. Helzer, Executive Secretary e-filed
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Re: Dubin Paper Company
 Case 04-CA-079713

Dear Executive Secretary Helzer:

Enclosed please find an original and copy of Counsel for the General Counsel's Opposition To Response in the above referenced case.

Copies of the above Motion have been served on this day on the persons below by first class mail or by e-mail.

Very truly yours,

PETER C. VERROCHI
Counsel for the Acting General Counsel

cc:

Frank Hockman, Dubin Paper Company, 1910 S. Columbus Boulevard,
Philadelphia, PA 19148-2820

Albert A. Ciardi, III, Esq. (ACiardi@ciardilaw.com)

Holly E. Smith, Esq. (hsmith@ciardilaw.com)

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

DUBIN PAPER COMPANY

and

Case 04-CA-079713

WAREHOUSE EMPLOYEES LOCAL
169 a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

OPPOSITION TO RESPONSE

On September 17, 2012, the Acting General Counsel filed a Motion for Default Judgment because Respondent had failed to file an answer to the Complaint and Notice of Hearing issued in this matter on August 23, 2012. Respondent had been provided with a letter dated September 10, 2012, advising that its Answer was overdue and that a Motion for Default Judgment would be filed if Respondent's Answer was not received by September 17, 2012. On September 18, 2012, the Board issued an Order Transferring Proceeding To The Board and Notice To Show Cause. The Board's Order required Respondent to show cause why the Motion for Default Judgment should not be granted. On September 26, 2012, Respondent filed its "Response of Frank Hockman and Frank Dubin To Counsel For General Counsel's Motion For Default Judgment And Notice To Show Cause," herein called the Response, and asserting, in substance: (1) that the Board proceeding should be stayed and/or adjudicated through the bankruptcy process; (2) that Frank Hoffman and Frank Dubin are not individually liable for any violations that may be established; and (3) that Respondent has previously communicated its position during the investigation of the subject unfair labor practice charge and the Union.

Counsel for the Acting General Counsel avers as follows:

“Where a pro se respondent fails to respond to complaint allegations until after the Notice to Show Cause has issued, despite having been notified in writing that it must do so, and has provided no good cause explanation for its failure to file a timely answer, subsequent attempts to file an answer will be denied as untimely.” *Pointing Plus, Inc.*, 358 NLRB No. 154, slip op. at 1 (September 27, 2012) and cases cited therein. The same result is appropriate when a respondent is in bankruptcy. *Joseph Hagins and Linda P. Szymoriak-Hagins, d/b/a His and Hers Beauty Spa*, 358 NLRB No. 126, slip op. at 2 (September 11, 2012). Respondent was notified in writing that it needed to file its answer to the Complaint. No response was received before the Board’s Notice to Show Cause issued. Based on the settled Board view on this issue, it is respectfully submitted that Respondent failed to fulfill its obligation to file its answer.

With respect to Respondent’s interposition of Bankruptcy proceeding, it is well established that Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *Nathanson v. NLRB*, 344 U.S. 25 (1952); *Asher Candy, Inc.*, 358 NLRB No. 5, slip op. at 2 fn.8 (2012) and the cases cited therein. Accordingly, Respondent’s assertion that the Board proceeding should be stayed lacks merit.

The gravamen of the Complaint is whether Respondent, acting through its managers, refused to provide to the Union certain requested information that was relevant to the Union’s representation of bargaining unit employees in connection with Respondent’s business closure and the effects of the closure on employees. Respondent’s focus in its Response is on the reasons for its closure and its current financial status rather than on its failure to answer the Complaint. Similarly, the Response fails to explain Respondent’s reasons for withholding the

information from the Union. That Dubin and Hockman may not be individually liable for Respondent's alleged violations is immaterial to the dispute concerning the Union's request for information. Thus, Respondent has not raised a cognizable defense to the violations alleged in the Complaint. In these circumstances, inasmuch as Respondent failed to answer the Complaint, which was served on Respondent and counsel, and have not shown good cause for this failure, its Response should be rejected and the Motion for Default Judgment should be granted.

Dated, Philadelphia, Pennsylvania, September 28, 2012.

A handwritten signature in black ink, appearing to read "Peter C. Verrochi", written over a horizontal line.

PETER C. VERROCHI
Counsel for the Acting General Counsel
National Labor Relations Board
Fourth Region
(215) 597-7640