

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

NORTHEASTERN LAND SERVICES, LTD.,
d/b/a/ THE NLS GROUP

and

Case No. 01-CA-039447

JAMISON JOHN DUPUY, an Individual

**CHARGING PARTY'S REPLY TO REGIONAL DIRECTOR'S RESPONSE TO
CHARGING PARTY'S REQUEST FOR RECONSIDERATION OR CLARIFICATION**

The Charging Party respectfully replies briefly to the Regional Director's response.

The Deputy Regional Attorney states that the Charging Party's objection to the waiver of rights language in the settlement agreement is unfounded because these proceedings are themselves evidence that the Charging Party retains, and has exercised, his right to challenge the validity of the settlement agreement. This contention misses the mark for two reasons.

First, the Charging Party has not signed and is not a party to the Compliance Settlement Agreement. Therefore, he has not waived any of his rights. Had the Charging Party signed the settlement agreement he could not have exercised his rights to challenge the settlement agreement in any manner. Therefore, the Deputy Regional Attorney's argument is *non sequitur*.

Second, the Charging Party pointed out to the Board in his motion for reconsideration or clarification that the waiver of *its* rights (not his rights) under Paragraph 21 of the Compliance Settlement Agreement frustrates the National Labor Relations Act ("Act") because that waiver prevents the Board from carrying out its mandate to effectuate the policies of the Act.

To effectuate the policies of the Act Congress empowered the Board with certain enforcement right. By approving the Compliance Settlement Agreement, the Board has waived *all of those rights* by waving all further and other proceedings to which it may be entitled under the Act or the Board's Rules and Regulations under Paragraph 21, which provides as follows:

All parties waive all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

Paragraph 21 prohibits the Board from bringing any further or other proceedings under the Act, not just against NLS, but also against anyone. As worded, Paragraph 21 also prohibits the Board from bringing administrative compliance proceedings and petitioning a United States court of appeals for orders to compel compliance with the judgment of enforcement that was issued by the First Circuit Court of Appeals.

Thus, in the event NLS defaults on its monthly backpay installment payment, the Board's *sole remedy* is to seek recourse through the default provisions of the settlement agreement against a "judgment-proof" corporation that owned no substantial assets. The default provision found in Paragraph 14 would allow the Board to add back to the unpaid backpay balance the interest it had previously waived. Paragraph 16 would permit the Board to institute collections proceedings against NLS in "any court of competent jurisdiction" to collect the unpaid balance.

NLS is currently in default of the agreement by not paying over to the IRS the payroll taxes it has been withholding from the net backpay checks, not paying its share of the FICA taxes as the employer and not providing the Charging Party with IRS Forms W-9 and 1099-INT.¹ Because the Board has waived all of its enforcement rights under the Act without providing a remedy for itself in the event NLS defaults on these terms, the Board has no power to compel NLS' performance.

Because the Board has expressly waived its right to bring all further and other proceedings to which it may be entitled under the Act or the Board's Rules and Regulations, there is nothing to prevent Jeffrey M. Deuink from creating another corporation and funneling all of the new business that he acquires to his new corporation and not to NLS. The Board can no longer pursue the successor corporation under the Act. The same is true regarding an assignee. Likewise, if Mr. Deuink simply decides to shutdown NLS entirely and retire, the Board has no ability to enforce compliance because it has waived all of its rights under the Act.

Thus, Paragraph 21 renders the Compliance Settlement Agreement unsecured and unenforceable and prevents the Board from effectuating the policies of Act and achieving compliance with the mandates of the judgment of enforcement issued by the First Circuit.

Moreover, Paragraph 8 and Paragraph 19 of the Compliance Settlement Agreement render Paragraph 21 *superfluous*. Therefore, Paragraph 21 can be removed from the settlement agreement without altering the contractual relationship between NLS and the Board.

Paragraph 8 provides, as follows:

All parties agree that the backpay amounts specified above are correct and constitute the full backpay due pursuant to the Board's Order, as enforced. All parties, therefore, hereby waive any right to a hearing or any other legal proceeding to dispute the reinstatement offer, accuracy of the amounts described above, or the findings of the Court of Appeals, the Board and the Administrative Law Judge.

Paragraph 19 provides, as follows:

Provided all payments required under this Compliance Settlement are timely made, and [NLS] otherwise complies with all of the terms of this Compliance Settlement

¹ Whether or not NLS is currently in default of the Compliance Settlement Agreement is not germane to the point being made.

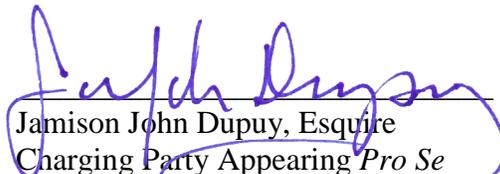
Agreement, compliance with the terms of this Compliance Settlement Agreement constitutes final resolution of Board Case 01-CA-039447.

As long as NLS is performing under the Compliance Settlement Agreement and complying with all of its terms, under Paragraph 8 and Paragraph 19 neither the Board nor NLS can take action against the other under the Act or the Board's Rules and Regulations. Every contract contains an implied covenant of good faith and fair dealing requiring that neither party do anything that will injure the right of the other party to receive the benefits of the contract. The Restatement (Second) of Contracts, Sec. 205 (1981) provides "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement."

Therefore, in light of the provisions contained in Paragraph 8 and Paragraph 19, and the implied covenant of good faith and fair dealing, Paragraph 21 adds nothing to the contractual relationship between NLS and the Board and must be removed because it is superfluous and renders the Compliance Settlement Agreement unsecured and unenforceable and prevents the Board from effectuating the policies of Act and achieving full compliance with all of the mandates of the judgment of enforcement.

Dated: October 22, 2013

Respectfully submitted,

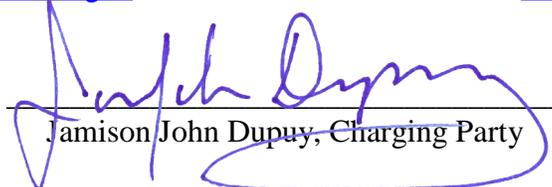

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CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing document upon the following individuals listed below by email this date:

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Jamison John Dupuy, Charging Party

Dated: October 22, 2013