

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

ANTHONY'S PAINTING, LLC

and

Case 14-CA-30082

PAINTERS DISTRICT COUNCIL NO. 2

**MOTION FOR DEFAULT JUDGMENT DUE TO  
WITHDRAWAL OF ANSWER**

Counsel for the General Counsel, pursuant to Sections 102.20, 102.24, and 102.50 of the Board's Rules and Regulations, Series 8, as amended, moves that the proceeding in the above-captioned case be transferred to the Board for final determination on the basis of the pleadings. Attached to this Motion as appendices are copies of the relevant documents involving the parties, including the charge, amended charge, second amended charge, Complaint and Notice of Hearing, Respondent's Answer, Respondent's February 24, 2011 letter withdrawing its Answer, Amendment to Complaint,<sup>1</sup> and Respondent's March 24, 2011 electronic mail message stating that Respondent will not be filing an Answer to the Amendment to Complaint.

Counsel for the General Counsel further moves that, upon transfer of this proceeding to the Board, the Board issue an appropriate Order to Show Cause why this Motion should not be granted.

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<sup>1</sup> The Region issued an Amendment to the Complaint to correct a typographical error in Subparagraph 6D of the Complaint.

Counsel for the General Counsel moves that unless Respondent shows good cause why this Motion should not be granted, all allegations contained in the Complaint be deemed admitted to be true and that an order be entered providing for an appropriate remedy for the violations alleged, without holding a hearing and without evidence in support thereof.

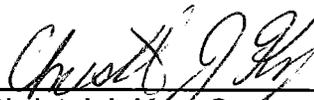
In support of this Motion, Counsel for the General Counsel states as follows:

Withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered true. *Rock Technologies, Inc.*, 346 NLRB No. 68 (2006). Counsel for the General Counsel has spoken to Respondent's Attorney John C. Kress. Mr. Kress has advised Counsel for the General Counsel that Respondent was withdrawing its Answer so that a final determination upon default judgment without a hearing could be entered.

WHEREFORE, Counsel for the General Counsel submits that the matter is appropriate for final determination upon default judgment without a hearing, and that a final order should be entered, in accordance with the allegations of the Complaint, without taking evidence.

March 30, 2011

Respectfully submitted,



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Christal J. Key, Counsel for the General Counsel  
National Labor Relations Board  
Region 14  
1222 Spruce Street, Room 8.302  
Saint Louis, MO 63103-2829

## TABLE OF APPENDICES

- 1(a) Original charge filed, dated April 14, 2010.
- 1(b) Original amended charge filed, dated April 15, 2010.
- 1(c) Affidavit of Service for 1(a) and 1(b), dated April 15, 2010.
- 1(d) Affidavit of Service for 1(a) and 1(b) resent, dated April 28, 2010.
- 1(e) Original second amended charge filed, dated June 23, 2010.
- 1(f) Affidavit of Service for 1(e), dated June 28, 2010.
- 1(g) Original Complaint and Notice of Hearing, dated August 30, 2010.
- 1(h) Affidavit of Service for 1(g), dated August 30, 2010.
- 1(i) Respondent's Answer received, dated September 28, 2010.
- 1(j) Order Postponing Hearing Indefinitely, dated February 22, 2011.
- 1(k) Affidavit of Service for 1(j), dated February 22, 2011.
- 1(l) Letter withdrawing Respondent's Answer, dated February 24, 2011.
- 1(m) Amendment to Complaint, dated March 10, 2011.
- 1(n) Affidavit of Service for 1(m), dated March 10, 2011.
- 1(o) Electronic mail message from Respondent's Counsel stating that Respondent will not be filing an Answer to the Amendment to Complaint.

**CERTIFICATE OF SERVICE**

Pursuant to the National Labor Relations Board's Rules and Regulations, Section 102.114, a true and correct copy of the foregoing Counsel for the General Counsel's Motion for Default Judgment Due to Withdrawal of Answer was served electronically through the Board's website, on this 30<sup>th</sup> day of March 2011, and was also served electronically upon the following parties:

Mr. John C. Kress, Attorney  
Kress Law Firm, LLC  
4247 South Grand Avenue  
St. Louis, MO 63111  
jckress@thekresslawfirm.com

Mr. James P. Faul, Attorney  
Bartley Goffstein, L.L.C.  
4399 Laclede Avenue  
St. Louis, MO 63108  
Jfaul@gbgllaw.com

  
\_\_\_\_\_  
Christal J. Key, Counsel for the  
General Counsel  
National Labor Relations Board  
Region 14  
1222 Spruce Street, Room 8.302  
Saint Louis, MO 63103-2829

INTERNET  
FORM NLRB-501  
(2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case <b>14-CA-30082</b>	Date Filed <b>4/14/10</b>

**INSTRUCTIONS:**

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

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer <b>Anthony's Painting, LLC</b>	b. Tel. No. <b>314-892-6245</b>
	c. Cell No. <b>unknown</b>
	f. Fax No. <b>314-845-9524</b>
d. Address (Street, city, state, and ZIP code) <b>205 Martigney St. Louis, Missouri 63129 / 5624A S. Compton Ave. St. Louis, Missouri 63111</b>	e. Employer Representative <b>Anthony Dattilo / Heather Dattilo / Attorney, John C. Kress, Esq.</b>
	g. e-Mail <b>anthonyspainting@ sbcglobal.net</b>
	h. Number of workers employed <b>varies</b>
i. Type of Establishment (factory, mine, wholesaler, etc.) <b>Painting upon structures, interior and exterior and related work</b>	j. Identify principal product or service <b>Painting upon structures, interior and exterior and related work</b>
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 (list subsections) 8(a)(1) and 8(a)(5) 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)  <b>Since on or about 11/14/09 the above named employer by its agents, employees and representatives has failed, and continues to fail, to abide by a collective bargaining agreement voluntarily entered into with the below named labor organization by failing to make contributions to employee benefit funds, remit dues to the named labor organization, failing to maintain a payment bond for the benefit of the labor organization and its associated benefit funds and failing to report covered bargaining unit work. Further, the employer has unilaterally repudiated the same collective bargaining agreement without bargaining with the labor organization.</b>	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) <b>Painters District Council No. 2</b>	
4a. Address (Street and number, city, state, and ZIP code) <b>2501 59th Street St. Louis, Missouri 63110</b>	4b. Tel. No. <b>314-647-2453</b>
	4c. Cell No. <b>unknown</b>
	4d. Fax No. <b>314-647-3350</b>
	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) <b>International Union of Painters and Allied Trades, AFL-CIO</b>	
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  _____ (Print/type name and title or office, if any) <b>James P. Faul</b> (Print/type name and title or office, if any)	Tel. No. <b>314-531-1054</b>
	Office, if any, Cell No. <b>314-531-1054</b>
	Fax No. <b>314-531-1131</b>
	e-Mail <b>jfaul@bgblaw.com</b>
Address <b>4399 Laclede Ave., St. Louis, Missouri 63108</b>	<b>April 13, 2010</b> (date)

**ORIGINAL**

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

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 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.

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 14-CA-30082	Date Filed 04/15/10

INSTRUCTIONS:

File an original and 4 copies of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Anthony's Painting, LLC	b. Number of workers employed 13
c. Address (street, city, state ZIP code) 205 Martigney St. Louis, MO 63129	d. Employer Representative Anthony Dattilo, Vice President
	e. Telephone No. (314) 892-6245
	Fax No. (314) 845-9524
f. Type of Establishment (factory, mine, wholesaler, etc.) contractor	g. Identify principal product or service painting

h. The above-named employer has engaged in and is engaging unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) & 8(d) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

The above named Employer, by its officers, agents and representatives since about August 5, 2009 has failed and refused to bargain collectively and in good faith with Painters District Council No. 2, the exclusive representative for purposes of collective bargaining of the employees of said employer included in a unit appropriate for such purposes, by failing to abide by a collective bargaining agreement, failing to make contributions to various funds, failing to remit dues and vacation funds, failing to maintain a payment bond for the benefit of the labor organization and its associated benefit funds.

The above named Employer, by its officers, agents and representatives since about November 14, 2009 has failed and refused to bargain collectively and in good faith with Painters District Council No. 2, the exclusive representative for purposes of collective bargaining of the employees of said employer included in a unit appropriate for such purposes, by failing to report covered bargaining unit work, repudiating the parties collective-bargaining agreement and bypassing the Union and engaging in direct dealing with bargaining unit employees regarding their terms and conditions of employment.

Due to the potential harm likely to result from the Employer's conduct, Painters District Council No. 2 hereby requests relief pursuant to Section 10(j) of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Painters District Council No. 2

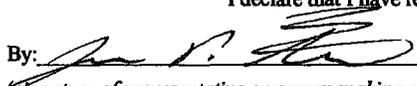
4a. Address (street and number, city, state, and ZIP code) 2501 59th Street St. Louis, MO 63110	4b. Telephone No. (314) 647-2453
	Fax No. (314) 647-3350

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)

International Union of Painters and Allied Trades, AFL-CIO

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:   
(signature of representative or person making charge) James P. Faul

Attorney  
(title, if any)

(314) 531-1054  
(Telephone No.)

04/15/10  
(date)

**ORIGINAL**

Address: 4099 Laclede Ave., St. Louis, MO 63108

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

PRIVACY ACT STATEMENT

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

**Anthony's Painting, LLC**

and

**Painters District Council No. 2**

Case 14-CA-30082

DATE OF  
MAILING

April 15, 2010

**AFFIDAVIT OF SERVICE OF Charge and Amended Charge Against Employer**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Mr. Anthony Dattilo  
Vice President  
Anthony's Painting, LLC  
205 Martigney  
St. Louis, MO 63129

Mr. John C. Kress, Attorney  
Kress Law Firm, LLC  
5624A South Compton Avenue  
St. Louis, MO 63111

*Frederick E. Norton*

Frederick E. Norton

Subscribed and sworn to before me on

April 16, 2010

NATIONAL LABOR RELATIONS BOARD

*Ravi G. Sreed*

DESIGNATED AGENT

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

**Anthony's Painting, LLC**

and

**Painters District Council No. 2**

Case 14-CA-30082

DATE OF  
MAILING

April 28, 2010

**AFFIDAVIT OF SERVICE OF Charge and Amended Charge Against Employer**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Mr. Anthony Dattilo  
Vice President  
Anthony's Painting, LLC  
11040 Lin Valle Drive, Suite H  
St. Louis, MO 63123

Mr. John C. Kress, Attorney  
Kress Law Firm, LLC  
5624A South Compton Avenue  
St. Louis, MO 63111

*Frederick E. Norton*

Frederick E. Norton

Subscribed and sworn to before me on

April 29, 2010

NATIONAL LABOR RELATIONS BOARD

*Louie G. Sneed*  
DESIGNATED AGENT

Form NLRB - 501  
44 U.S.C. 3512

FORM EXEMPT ORDER

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
SECOND CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 14-CA-30082	Date Filed 06/23/10

INSTRUCTIONS:

File an original and 4 copies of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

I. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Anthony's Painting, LLC	b. Number of workers employed 13
c. Address (street, city, state ZIP code) 11040 Lin Valle Drive, Suite H St. Louis, MO 63123	d. Employer Representative Anthony Dattilo, Vice President
	e. Telephone No. (314) 892-6245
	Fax No. (314) 845-9524
f. Type of Establishment (factory, mine, wholesaler, etc.) contractor	g. Identify principal product or service painting
h. The above-named employer has engaged in and is engaging unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) <u>8(a)(5) &amp; 8(d)</u> of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.	

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

The above named Employer, by its officers, agents and representatives since sometime after November 30, 2005, on a date unknown to the Union but particularly within the knowledge of the Employer, has failed and refused to bargain collectively and in good faith with Painters District Council No. 2, the exclusive representative for purposes of collective bargaining of the employees of said employer included in a unit appropriate for such purposes, by failing to pay employees for overtime as provided for within the parties' collective bargaining agreement.

The above named Employer, by its officers, agents and representatives since about October 14, 2009 has failed and refused to bargain collectively and in good faith with Painters District Council No. 2, the exclusive representative for purposes of collective bargaining of the employees of said employer included in a unit appropriate for such purposes by failing to report covered bargaining unit work, failing to make contributions to various funds, failing to remit dues and vacation funds, failing to maintain a payment bond for the benefit of the labor organization and its associated benefit funds, failing to allow the Union to audit the books of the Employer, utilizing non-union employees to perform bargaining unit work, and failing to pay employees the contractual wage rate. Since on or about November 14, 2009 the above named Employer, by its officers, agents and representatives repudiated its collective bargaining agreement with the Union.

3. Full name of party filing charge (If labor organization, give full name, including local name and number)  
Painters District Council No. 2

4a. Address (street and number, city, state, and ZIP code) 2501 59th Street St. Louis, MO 63110	4b. Telephone No. (314) 647-2453
	Fax No. (314) 647-3350

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)  
International Union of Painters and Allied Trades, AFL-CIO

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.

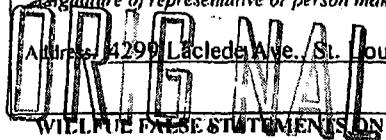
By: [Signature]  
James P. Faul  
(signature of representative or person making charge)

Attorney  
(title, if any)

Address: 4299 Laclede Ave. St. Louis, MO 63108

(314) 531-1054  
(Telephone No.)

06/23/10  
(date)



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

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 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.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

**Anthony's Painting, LLC**

and

**Painters District Council No. 2**

Case 14-CA-30082

DATE OF  
MAILING

June 28, 2010

**AFFIDAVIT OF SERVICE OF Second amended Charge Against Employer**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Mr. Anthony Dattilo  
Vice President  
Anthony's Painting, LLC  
11040 Lin Valle Drive, Suite H  
St. Louis, MO 63123

Mr. John C. Kress, Attorney  
Kress Law Firm, LLC  
5624A South Compton Avenue  
St. Louis, MO 63111

*Frederick E Norton*

Frederick E. Norton

Subscribed and sworn to before me on  
June 29, 2010

NATIONAL LABOR RELATIONS BOARD

*Lois G. Sneed*

DESIGNATED AGENT

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

ANTHONY'S PAINTING, LLC

and

Case 14-CA-30082

PAINTERS DISTRICT COUNCIL NO. 2

**COMPLAINT AND NOTICE OF HEARING**

Painters District Council No. 2, here called the Union, has charged that Anthony's Painting, LLC, here called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq., here called the Act. Based thereon 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, here called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1

A. The charge in this proceeding was filed by the Union on April 14, 2010, and a copy was served by regular mail on Respondent on April 14, 2010.

B. The amended charge in this proceeding was filed by the Union on April 15, 2010, and a copy was served by regular mail on Respondent on April 28, 2010.

C. The second amended charge in this proceeding was filed by the Union on June 25, 2010, and a copy was served by regular mail on Respondent on June 28, 2010.

A. At all material times, Respondent, a Missouri limited liability company, with an office and place of business in St. Louis, Missouri, has been engaged in the construction industry as a commercial and residential painting contractor.

B. During the calendar year ending December 31, 2009, Respondent, in conducting its business operations described above in subparagraph 2A, performed services valued in excess of \$50,000 in states other than the State of Missouri.

C. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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

Anthony Dattilo	-	Vice President
Heather Dattilo	-	President

B. At all material times, Patricia Hoffman has held the position of Respondent's Office Manager and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

A. The following employees of Respondent, here called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen painters, tapers and drywall finishers, paper and wall covering hangers, apprentices, pre-apprentices, summer help and working foreman employed by the Employer.

B. Respondent, an employer engaged in the building and construction industry, as described above in subparagraph 2A, has recognized the Union as the exclusive collective-bargaining representative of the Unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in a collective-bargaining agreement, which Respondent signed on November 30, 2005, and which is effective through August 31, 2010.

C. For the period from November 30, 2005 through August 31, 2010, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the Unit.

A. Sometime after November 30, 2005, the exact date being unknown to the undersigned, or to the Union, but particularly within the knowledge of Respondent, Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above in subparagraph 2B by failing to pay Unit employees for their overtime work at the wage rates required by Sections 17 and 18 of the collective-bargaining agreement, and instead Respondent credited employees with "banked hours" for such overtime work.

B. Since about October 14, 2009, Respondent failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above in subparagraph 2B by:

- (i) delaying and/or failing to remit dues as required;
- (ii) delaying and/or failing to remit money to the Union's vacation fund;
- (iii) failing to maintain a surety-bond; and
- (iv) delaying and/or failing to make the following required fringe benefit contributions: (1) Painters District Council No. 2 Welfare Plan; (2) Painters District Council No. 2 Pension Plan; (3) Painters District Council No. 2 Apprenticeship and Journeyman Training Fund; and (4) Labor Management Cooperation Fund.

C. Since about November 14, 2009, Respondent effectively repudiated the collective-bargaining agreement described above in subparagraph 2B by failing to continue in effect the terms of the collective-bargaining agreement including, but not limited to:

- (i) refusing to remit contribution reports to the Union;
- (ii) cancelling a scheduled audit and refusing to reschedule an audit;
- (iii) refusing to adhere to the union security clause;
- (iv) refusing to withhold and/or remit dues;
- (v) refusing to withhold and/or remit money to the Union's vacation fund;
- (vi) refusing to maintain a surety-bond;
- (vii) refusing to make the following required fringe benefit contributions: (1) Painters District Council No. 2 Welfare Plan; (2) Painters District Council No. 2 Pension Plan; (3) Painters District Council No. 2 Apprenticeship and Journeyman Training Fund; and (4) Labor Management Cooperation Fund; and
- (viii) refusing to pay employees at the contractual wage rates.

D. Respondent engaged in the conduct described above in subparagraphs 6A and 6C without the Union's consent.

E. The terms and conditions of employment described above in subparagraphs 6A through 6C are mandatory subjects for the purposes of collective bargaining.

7

On about December 1, 2009, Respondent, by letter, withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit and stated it was no longer signatory to the collective-bargaining agreement described above in subparagraph 2B.

8

By the conduct described above in paragraphs 6 and 7, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

9

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

WHEREFORE, as part of the remedy for Respondent's unfair labor practices alleged above in paragraphs 6 and 7, the Acting General Counsel seeks an Order requiring that interest on any backpay award be compounded on a quarterly basis.

The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### **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 September 13, 2010, or postmarked on or before September 11, 2010. 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 by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **E-Gov tab**, select **E-Filing**, and then 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 document 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 be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

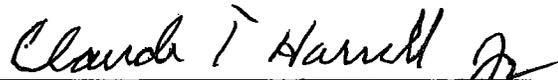
Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and

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 Motion for Default Judgment, that the allegations in the complaint are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on **October 25, 2010**, at **1 p.m.**, or as soon thereafter as you may be heard and on consecutive days thereafter until concluded, a hearing will be conducted at **1222 Spruce Street, Room 8.302, Saint Louis, Missouri**, 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.

Dated at St. Louis, Missouri, this 30th day of August 2010.



Claude T. Harrell Jr., Regional Director  
National Labor Relations Board  
Region 14  
1222 Spruce Street, Room 8.302  
Saint Louis, MO 63103-2829

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 14-CA-30082

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 filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in **detail**;
- (3) Alternative 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.

Mr. Anthony Dattilo, Vice President  
Anthony's Painting, LLC  
11040 Lin Valle Drive, Suite H  
St. Louis, MO 63123 7009 2250 0002 3848 1210

Mr. John C. Kress, Attorney  
Kress Law Firm, LLC  
5624A South Compton Avenue  
St. Louis, MO 63111

Mr. David Doerr, Business Representative  
Painters District Council 2  
2501 59th Street  
St. Louis, MO 63110 7009 2250 0002 3848 1227

Mr. James P. Faul, Attorney  
Bartley Goffstein, L.L.C.  
4399 Laclede Avenue  
St. Louis, MO 63108

**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)

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

ANTHONY'S PAINTING, LLC

and

PAINTERS DISTRICT COUNCIL NO. 2

Case 14-CA-30082

DATE OF MAILING August 30, 2010

**AFFIDAVIT OF SERVICE OF** Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified mail upon the following persons, addressed to them at the following addresses:

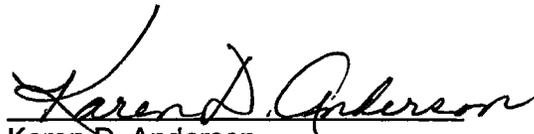
Copies sent by regular mail:

Mr. Anthony Dattilo, Vice President  
Anthony's Painting, LLC  
11040 Lin Valle Drive, Suite H  
St. Louis, MO 63123  
(Respondent) 7009 2250 0002 3848 1210

Mr. John C. Kress, Attorney  
Kress Law Firm, LLC  
5624A South Compton Avenue  
St. Louis, MO 63111  
(Respondent's Attorney)

Mr. David Doerr, Business Representative  
Painters District Council 2  
2501 59th Street  
St. Louis, MO 63110  
(Charging Party) 7009 2250 0002 3848 1227

Mr. James P. Faul, Attorney  
Bartley Goffstein, L.L.C.  
4399 Laclede Avenue  
St. Louis, MO 63108  
(Charging Party's Attorney)

  
Karen D. Anderson

Subscribed and sworn to before me on

August 31, 2010

NATIONAL LABOR RELATIONS BOARD



DESIGNATED AGENT

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

Painters District Council No. 2,	)	
	)	
Petitioner,	)	Cause No.: 14-CA30082
	)	
v.	)	
	)	
Anthony's Painting, LLC	)	
	)	
Respondent.	)	
	)	

**ANSWER**

1. Respondent admits the allegations contained in paragraphs 1A, 1B and 1C of the Complaint.
2. Respondent admits the allegations contained in paragraphs 2A. Respondent denies the allegations contained in 2B, as it lacks information sufficient to form a belief as to the contents of such paragraph. Respondent denies the allegations contained in paragraph 2C, and further states that it seeks a legal conclusion for which no answer is required.
3. Respondent denies the allegations contained in paragraph 3, and further states that such allegations seek a legal conclusion for which no answer is required.
4. Respondent admits that Anthony Dattilo and Heather Dattilo are Vice President and President, but denies all remaining allegations in paragraph 4A, and further state that such allegations seek a legal conclusion for which no answer is required. Respondent admits that Patricia Hoffman held the position of office manager but denies all remaining allegations in paragraph

4B, and further states that such allegations seek a legal conclusion for which no answer is required.

5. Respondent denies the allegations set forth in paragraphs 5A, 5B and 5C, and further states that such allegations seek a legal conclusion for which no answer is required.
6. Respondent denies the allegations set forth in paragraphs 6A, 6B, 6C, 6D and 6E, and further states that such allegations seek a legal conclusion for which no answer is required, as to whether or not the allegations contravene a collective bargaining agreement.
7. Respondent denies the allegations set forth in paragraph 7.
8. Respondent denies the allegations set forth in paragraph 8, and further states that such allegations seek a legal conclusion for which no answer is required.
9. Respondent denies the allegations set forth in paragraph 9, and further states that such allegations seek a legal conclusion for which no answer is required.

#### **AFFIRMATIVE DEFENSES**

10. Satisfaction and Release
11. Plaintiff's suit is barred by the doctrine of Equitable Estoppel.
12. Plaintiff's action is barred by the doctrine of laches.
13. Plaintiff's action is barred by the doctrine of waiver.
14. Plaintiff's acceptance of late payments prior to filing suit constituted an amendment of the contractual relationship of the parties barring this litigation.
15. Plaintiff fails to state a claim upon which relief can be granted.
16. Force Majeur: Defendant's performance under the contract, if such agreement

is valid is excused due to superseding, intervening events beyond the control of Defendant, excusing his performance/payment.

17. Defendant reserves the right to add additional affirmative defenses during the course of this litigation.

WHEREFORE, Respondent Anthony's Painting, LLC, having answered such Complaint pray that this Court dismiss such action with prejudice and enter an award against Petitioner for the costs and expenses expended including Respondent's attorney's fees and any other relief this Court deems necessary to promote the interests of justice between the parties.

Respectfully submitted,

Signature/electronic

---

JOHN C. KRESS (#499750)  
The Kress Law Firm, LLC  
5624A South Compton Avenue  
St. Louis, MO 63111  
Phone: (314) 631-3883  
Facsimile: (314) 256-9240

#### **CERTIFICATE OF SERVICE**

On this 28<sup>th</sup> day of September, 2010, an electronic copy of this document was delivered to:

Mr. James P. Faul  
Bartley Goffstein, LLC  
4399 Laclede Avenue  
St. Louis, MO 63108

Signature/electronic

---

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

ANTHONY'S PAINTING, LLC

and

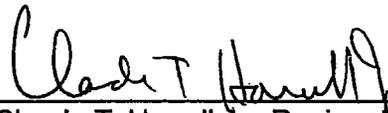
Case 14-CA-30082

PAINTERS DISTRICT COUNCIL NO. 2

**ORDER POSTPONING HEARING INDEFINITELY**

IT IS HEREBY ORDERED that the hearing in the above-entitled matter scheduled to be held February 22, 2011, is postponed indefinitely.

February 22, 2011



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Claude T. Harrell Jr., Regional Director  
National Labor Relations Board  
Region 14  
1222 Spruce Street, Room 8.302  
St. Louis, MO 63103-2829

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

ANTHONY'S PAINTING, LLC  
  
and  
  
PAINTERS DISTRICT COUNCIL NO. 2

Case 14-CA-30082

DATE OF MAILING February 22, 2011

**AFFIDAVIT OF SERVICE OF ORDER POSTPONING HEARING INDEFINITELY**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Mr. Anthony Dattilo  
Vice President  
Anthony's Painting, LLC  
4129 Parkhill Court  
St. Louis, MO 63125  
(Respondent)

Mr. John C. Kress  
Attorney  
Kress Law Firm, LLC  
4247 South Grand Avenue  
St. Louis, MO 63111  
(Respondent's Attorney)

Mr. David Doerr  
Business Representative  
Painters District Council 2  
2501 59th Street  
St. Louis, MO 63110  
(Charging Party)

Mr. James P. Faul  
Attorney  
Bartley Goffstein, L.L.C.  
4399 Laclede Avenue  
St. Louis, MO 63108  
(Charging Party's Attorney)

  
Lori A. Sneed

<p>Subscribed and sworn to before me on  February 23, 2011</p>	<p>NATIONAL LABOR RELATIONS BOARD  DESIGNATED AGENT</p>
--	---

THE KRESS LAW FIRM, LLC  
4247 SOUTH GRAND BOULEVARD  
ST. LOUIS, MISSOURI 63111  
(314) 631-3883  
FAX (314) 332-1534  
jckress@thekresslawfirm.com

JOHN C. KRESS

ATTORNEY AT LAW

February 24, 2011

Via Regular U.S. Mail

Ms. Christal J. Key  
United States Government  
National Labor Relations Board  
Region 14  
1222 Spruce Street  
Room 8.302  
St. Louis, MO 63103-2829

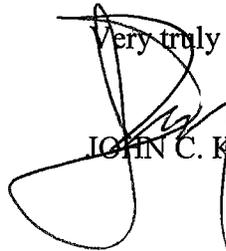
Re: Anthony's Painting, LLC  
Case 14-CA-30082

Dear Ms. Key:

This letter is a follow-up to my e-mail sent to you previously, stating that Anthony's Painting, LLC was withdrawing its Answer in the above referenced matter.

Very truly yours,

JOHN C. KRESS



2011 FEB 25 11:14  
MAIL ROOM 63103

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

ANTHONY'S PAINTING, LLC

and

Case 14-CA-30082

PAINTERS DISTRICT COUNCIL NO. 2

**AMENDMENT TO COMPLAINT**

A Complaint and Notice of Hearing having issued on August 30, 2010,

IT IS ORDERED, pursuant to Section 102.17 of the Board's Rules and Regulations that the above Complaint is amended by replacing the word "and" in subparagraph 6D with the word "through". Subparagraph 6D now reads:

D. Respondent engaged in the conduct described above in subparagraphs 6A through 6C without the Union's consent.

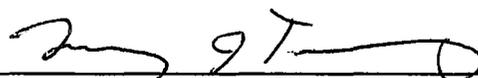
**ANSWER REQUIREMENT**

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 amendment to the complaint. The answer must be **received by this office on or before March 24, 2011 or postmarked on or before March 23, 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](http://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.

Dated at St. Louis, Missouri, this 10th day of March 2011.



Mary J. Tobey, Acting Regional Director  
National Labor Relations Board  
Region 14  
1222 Spruce Street, Room 8.302  
St. Louis, MO 63103-2829

Attachments

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

ANTHONY'S PAINTING, LLC

and

PAINTERS DISTRICT COUNCIL NO. 2

Case 14-CA-30082

DATE OF MAILING March 10, 2011

**AFFIDAVIT OF SERVICE OF AMENDMENT TO COMPLAINT**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified mail upon the following persons, addressed to them at the following addresses:

Copies sent by regular mail:

Mr. Anthony Dattilo, Vice President  
Anthony's Painting, LLC  
4129 Parkhill Court  
St. Louis, MO 63125  
(Respondent) 7009 2250 0002 3848 2348

Mr. John C. Kress, Attorney  
Kress Law Firm, LLC  
4247 South Grand Avenue  
St. Louis, MO 63111  
(Respondent's Attorney)

Mr. David Doerr, Business Representative  
Painters District Council 2  
2501 59th Street  
St. Louis, MO 63110  
(Charging Party) 7009 2250 0002 3848 2354

Mr. James P. Faul, Attorney  
Bartley Goffstein, L.L.C.  
4399 Laclede Avenue  
St. Louis, MO 63108  
(Charging Party's Attorney)

  
Karen D. Anderson

Subscribed and sworn to before me on

March 11, 2010

NATIONAL LABOR RELATIONS BOARD

  
DESIGNATED AGENT

**From:** jckress@thekresslawfirm.com [mailto:jckress@thekresslawfirm.com]  
**Sent:** Thursday, March 24, 2011 4:39 PM  
**To:** Key, Christal J.  
**Cc:** jckress@thekresslawfirm.com; David Crosby; jappelbaum@daandm.com  
**Subject:** NLRB v. Anthony's Painting, LLC

Christal,

Consistent with my February 24, 2011, letter Respondent will not file an Answer to the Amendment to the Complaint in Case 14-CA-30082 which issued on March 10, 2011.

John C. Kress

NOTE: The Missouri Bar Disciplinary Counsel requires all Missouri lawyers to notify all recipients of e-mail that (1) e-mail communication is not a secure method of communication; (2) any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from sender to recipient, (3) persons not participating in our communication may intercept our communications by improperly accessing your computer or my computer or even some computer unconnected to either of us which the e-mail passes through. I am communicating to you via-email because you have consented to receive communications via this medium. If you change your mind and want future communications to be sent in a different fashion, please advise me AT ONCE.

The information contained in this electronic mail transmission (and any accompanying attachments) is intended solely for its authorized recipient(s), and may be confidential and/or legally privileged. If you are not an intended recipient, you have received this transmission in error and are hereby notified that you are strictly prohibited from reading, copying, printing, distributing or disclosing any of the information contained in it. In that event, please contact us immediately by telephone at (314) 631-3883 and delete the original and all copies of this transmission (including any attachments) without reading or saving in any manner.

THE KRESS LAW FIRM, LLC  
4247 SOUTH GRAND AVENUE  
ST. LOUIS, MISSOURI 63111  
(314) 631-3883  
FAX (314) 332-1534