

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

BIOSOURCE LANDSCAPING SERVICES, LLC

and

Case 9-CA-46347

LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 1410, AFL-CIO

MOTION FOR DEFAULT JUDGMENT

NOW COMES THE ACTING GENERAL COUNSEL, by the undersigned Counsel for the Acting General Counsel, and moves that:

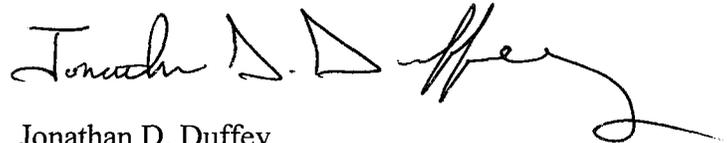
1. In order to effectuate the purposes of the National Labor Relations Act (the Act) and to avoid unnecessary costs or delay, the National Labor Relations Board (the Board) should exercise its power under Section 102.50 of the Board's Rules and Regulations, Series 8, as amended (the Board's Rules and Regulations) and transfer this proceeding to the Board.

2. Pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, all allegations of the complaint in this matter be deemed to be admitted to be true, and be so found by the Board for failure of Biosource Landscaping Services, LLC, herein called Respondent, to file an answer to the complaint. (A true copy of the charge and the complaint, with proofs of service, are attached hereto as Exhibits A and B, respectively.)

3. A decision issue, including findings of fact and conclusions of law, and providing for a remedial order, in accordance with paragraph 2 above for the reasons set forth in the supporting memorandum filed herewith.

Dated at Cincinnati, Ohio this 12th day of July 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan D. Duffey". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Jonathan D. Duffey
Counsel for the Acting General Counsel
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

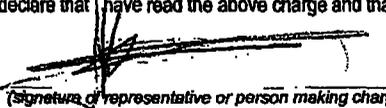
Attachments: Exhibits A and B

DO NOT WRITE IN THIS SPACE

Case 9-CA-46347	Date Filed APRIL 1, 2011
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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 Biosource Landscaping Services, LLC	b. Tel. No. (937) 372-5921
	c. Cell No.
	f. Fax No. (937) 372-3500
	g. e-Mail
	h. Number of workers employed >20
d. Address (Street, city, state, and ZIP code) 869 US Route 68 S Xenia, OH 45385	e. Employer Representative Theresa Lee
i. Type of Establishment (factory, mine, wholesaler, etc.) construction contractor	j. Identify principal product or service landscape
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) (5), (d) _____ 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) For the preceding six months, the Employer, by and through its representatives, has unilaterally changed express terms and conditions of the parties' collective bargaining agreement by failing to remit working dues to Laborers' Local 1410. Further, the Employer, by and through its representatives, has failed and refused to bargain in good faith by refusing to comply with a request for information necessary to enforce the collective bargaining agreement.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Laborers' International Union of North America, Local 1410	
4a. Address (Street and number, city, state, and ZIP code) 2228 East 3rd Street Dayton, OH 45403-2013	4b. Tel. No. 937.254.6172
	4c. Cell No.
	4d. Fax No. 937.254.9949
	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) Laborers' International Union of North America	
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)	Ryan K. Hymore, Esq. (Print/type name and title or office, if any)
10901 Reed Hartman Hwy., Ste. 207, Cincinnati, OH 45242	
Address _____ 4-1-2011 _____ (date)	
Tel. No. 513-255-5888	
Office, if any, Cell No.	
Fax No. 216-397-5845	
e-Mail rkhymore@bmanganolaw.com	

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.

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

Biosource Landscaping Services, LLC and Laborer's International Union of North America, Local 1410	Case 9-CA-46347
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Date of Mailing April 4, 2011

AFFIDAVIT OF SERVICE OF CHARGE

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 regular mail upon the following persons, addressed to them at the following addresses:

Ms. Theresa Lee Biosource Landscaping Services, LLP 869 US Route 68 S Xenia, OH 45385	***** National Labor Relations Board Washington, D.C. 20570
Subscribed and sworn to before me this <u>4</u> day of <u>April</u> , <u>2011</u> .	Designated Agent <i>Shonda Kramig</i> NATIONAL LABOR RELATIONS BOARD

6/16/11

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

BIOSOURCE LANDSCAPING SERVICES, LLC

and

Case 9-CA-46347

LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 1410, AFL-CIO

COMPLAINT
AND
NOTICE OF HEARING

Laborers International Union of North America, Local 1410, AFL-CIO, herein called the Union, has charged that Biosource Landscaping Services, LLC, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151, et seq., herein 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, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge was filed by the Union on April 1, 2011, and a copy was served by regular mail on Respondent on April 4, 2011.
2. (a) At all material times, Respondent, a corporation, has been engaged as a contractor performing commercial and residential landscaping and in the production and sale of landscaping products at its Xenia, Ohio location.

(b) During the past 12 months, Respondent, in conducting its operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000 and purchased and

EXHIBIT B

received goods and materials valued in excess of \$10,000 directly from points outside the State of Ohio.

(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.

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

4. At all material times, Theresa Lee held the position of Respondent's president and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

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

All employees engaged in work within the chartered trade jurisdiction of the Laborers International Union of North America, AFL-CIO, and employed in Highway-Heavy-Municipal and Utility Construction in the State of Ohio.

6. At all times since May 14, 2009, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit and has been recognized as such by Respondent. Such recognition is embodied in the terms of the current collective-bargaining agreement which became effective May 14, 2009.

7. About March 5, 2011, the Union, by letter, requested that Respondent provide an itemized list of all unit employees who have worked any hours during the period June 2009 through September 2010 within the Union's jurisdiction which would include the following Ohio counties: Champaign, Clark, Darke, Greene, Logan, Miami, Montgomery and Preble.

8. The information requested by the Union, as described above in paragraph 7, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

9. Since about March 5, 2011, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 7.

10. By the conduct described above in paragraph 9, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (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 **June 30, 2011**, or postmarked on or before **June 29, 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.

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 **August 9, 2011, 9 a.m.** at **Room 3003,**
John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio, 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.

Dated at Cincinnati, Ohio this 16th day of June 2011.


Gary W. Muffley, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

<p>In the Matter of</p> <p>BIOSOURCE LANDSCAPING SERVICES, LLC</p> <p>and</p> <p>LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1410, AFL-CIO</p>	<p>Case 9-CA-46347</p>
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Date of Mailing June 16, 2011

AFFIDAVIT OF SERVICE OF COMPLAINT AND NOTICE OF HEARING

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 certified mail upon the following persons, addressed to them at the following addresses:

<p>Ms. Theresa Lee Biosource Landscaping Services, LLC 869 US Route 68 South Xenia, OH 45385-9798</p> <p><u>BY REGULAR MAIL:</u></p> <p>Ms. Sasha Alexa M. Vandegrift Attorney at Law Coolidge Wall 33 West First Street, Suite 600 Dayton, OH 45402</p> <p>Mr. Ryan K. Hymore Attorney at Law Mangano Law Offices Co., LPA 10901 Reed Hartman Highway, Ste. 207 Cincinnati, OH 45242-2838</p>	<p><u>BY REGULAR MAIL CONTINUED:</u></p> <p>Laborers International Union of North America, Local 1410, AFL-CIO 2228 E 3rd Street Dayton, OH 45403-2013</p> <p>*****</p> <p>National Labor Relations Board Washington, D.C. 20570</p> <p><i>M. Haines</i></p>
<p>Subscribed and sworn to before me this <u>16th</u> day of <u>June</u> 2011</p>	<p>Designated Agent <i>McStattler</i> NATIONAL LABOR RELATIONS BOARD</p>