

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

KNIGHT PROTECTIVE SERVICES, INC.,
AND PHAIR SECURITY SOLUTIONS, INC.,
JOINT EMPLOYERS

and

Case 5-CA-36224

UNITED SECURITY & POLICE OFFICERS
OF AMERICA (USPOA)

**MOTION TO TRANSFER CASE TO THE BOARD, DISMISS COMPLAINT IN
PART, AND FOR SUMMARY JUDGMENT**

Pursuant to Sections 102.24 and 102.50 of the National Labor Relations Board Rules and Regulations and Statement of Standard Procedures, Series 8, as amended, herein called the Rules, Counsel for the Acting General Counsel respectfully moves that the National Labor Relations Board, herein referred to as the Board: (1) transfer this case and continue the proceedings before the Board; (2) deem the allegations set forth in the Complaint and Notice of Hearing (“Complaint”) issued January 31, 2011, as admitted to be true as to Respondent Knight Protective Services, Inc, without taking evidence supporting the allegations in the Complaint; (3) dismiss the complaint as to Respondent Phair Security Solutions, Inc.; (4) and grant Summary Judgment and issue a Decision and Order herein on the basis of the following:

1. On November 5, 2010, United Security & Police Officers of America (USPOA), herein called the Union, filed the original charge in this proceeding alleging, inter alia, violations of Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act,

herein referred to as the Act. On November 8, 2010, a copy was served by mail on Knight Protective Services, Inc., herein individually called Respondent KPS, and Phair Security Solutions, Inc., herein individually called Respondent PSSI, and jointly called Respondents. Copies of the charge and the Regional Director's letter of transmittal of the charge, together with the Affidavit of Service, are attached as Exhibits 1 and 2, respectively.

2. On December 23, 2010, the Union filed the first amended charge in this proceeding alleging, inter alia, violations of Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act, and a copy was served by mail on Respondent on the same date. Copies of the charge and the Regional Director's letter of transmittal of the charge, together with the Affidavit of Service, are attached as Exhibits 3 and 4, respectively.

3. On January 31, 2011, the Regional Director issued, by certified United States mail, a Complaint alleging that at all times since on or about September 14, 2010, Respondents have violated Sections 8(a)(1) and 8(a)(5) of the Act by failing and refusing to meet and bargain with the Union as described in paragraph 8 of the Complaint. The Complaint and the Affidavit of Service are attached as Exhibits 5 and 6, respectively.

4. On March 16, 2011, the Regional Director approved a bilateral informal Settlement Agreement reached by the parties resolving the above-mentioned allegations. The Settlement Agreement contains the following provision:

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice. *The Charged Party will*

notify the Region in writing upon completion of all affirmative obligations. In the event of non-compliance with this Settlement Agreement, the allegations in a Complaint issued with regard to the violations covered by the Settlement Agreement will be deemed admitted. Upon Motion for Summary Judgment the Board may, without the necessity of trial, find all allegations of the Complaint to be true, adopt findings of fact and conclusions of law consistent with the Complaint allegations, and issue an appropriate remedy for the violations found, including but not limited to the provisions of this Settlement Agreement. Subsequently, a judgment from a U.S. Court of Appeals may be entered ex parte.

The Settlement Agreement is attached as Exhibit 7.

5. On May 10, 2011, the Union met and bargained with Respondent PSSI. Respondent PSSI at that time was the subcontractor and a joint employer with Respondent KPS. On that same date, the Union and Respondent PSSI reached agreement on many issues, and the Union and Respondent PSSI further agreed that the remaining issues would be bargained directly between the Union and Respondent KPS.

6. On June 10, 2011, Respondent KPS informed the Union that Respondent PSSI was no longer the subcontractor for Respondent KPS. On that same date, Respondent KPS requested the Union to send its most recent proposal so that Respondent KPS and the Union could finish bargaining.

7. By letter dated June 20, 2011, sent by First Class Mail, the Regional Director informed Respondents that the case was closed on compliance and would remain closed as long as there was continuing compliance with the terms of the Settlement Agreement. This letter is attached as Exhibit 8.

8. On July 21, 2011, Respondent KPS informed the Union that it would no longer bargain because Respondent KPS was no longer the contractor.

9. On July 27, 2011, the Union filed a new charge against Respondent KPS in Case 05-CA-61809 alleging failure to bargain with the Union in violation of Section 8(a)(5), and prompting investigation into breach of the Settlement Agreement. The charge was originally mailed to Respondent KPS on July 29, 2011, but it was returned due to an incorrect address. A copy of the charge was served by mail on Respondent KPS on August 17, 2011.

10. Respondent KPS is currently the contractor and employer of the security officers in the bargaining unit as described in paragraph 5 of the Complaint, and it will continue to be the contractor and employer at least through November 30, 2011. The Contracting Officer for the relevant contract confirmed this by providing the signed task order by e-mail. A copy of the e-mail and signed task order are attached as Exhibits 9 and 10, respectively.

11. Respondent PSSI bargained with the Union in good faith until it was no longer an employer of the bargaining unit. Thus, Counsel for the Acting General Counsel respectfully requests that the Complaint be dismissed as to Respondent PSSI (specifically, paragraphs 5(e); 6 (a) through (e); 7; 8 (a) and (b); and 9(a) and (b)).

12. In light of the facts described in paragraphs 4 through 10 above, Respondent KPS has breached its obligations and duties specified in the March 16, 2011 Settlement Agreement.

Therefore, the default language provisions of the Settlement Agreement, set forth above in paragraph 4 of this Motion, apply. The default language provides that Respondent KPS's Answer to the Complaint in this matter shall be considered withdrawn. Thereupon, the Board may issue an order requiring Respondent KPS to show cause why said Motion of Counsel for the Acting General Counsel should not be granted. The Board may, without the necessity of trial, find all allegations in the Complaint to be true, make findings of fact and conclusions of law consistent with those allegations adverse to Respondent KPS on all issues raised by the pleadings. The Board may then issue an Order providing remedy as specified in the default language of the Settlement Agreement. The parties further agreed that a Board Order and U.S. Court of Appeals Judgment may be entered thereon *ex parte*.

WHEREFORE, Counsel for the Acting General Counsel respectfully requests, in accordance with Section 102.24 and 102.50 of the Board's Rules and Regulations, and the Board's decision in *B&G Building Maintenance, Inc.*, 339 NLRB No. 21 (2003), that the Board: (1) deem Respondent KPS's Answer withdrawn; (2) issue an order requiring Respondent KPS to show cause why Counsel for the Acting General Counsel's Motion for Summary Judgment should not be granted; (3) without the necessity of trial, find all allegations of the Complaint and Notice of Hearing to be true; (4) without the necessity of trial, issue a Decision and Order containing findings of fact and conclusions of law consistent with those allegations adverse to Respondent KPS on all issues raised by the

pleadings and that they be so found; and (5) issue an order requiring Respondent KPS to comply with the remaining terms of the Settlement Agreement by immediately bargaining with the Union.

Dated at Baltimore, Maryland, this 4th day of November, 2011.

Respectfully submitted,

/S/ Linda S. Harris Crovella
Counsel for the Acting General Counsel

INDEX OF ATTACHMENTS

- Exhibit 1 Charge in Case 5-CA-36224, filed November 21, 2010.
- Exhibit 2 Regional Director's letter of transmittal of the charge and Affidavit of Service in Case 5-CA-36224, dated November 8, 2010.
- Exhibit 3 First Amended Charge in Case 5-CA-36224, filed December 23, 2010.
- Exhibit 4 Regional Director's letter of transmittal of the First Amended charge and Affidavit of Service in Case 5-CA-36224, dated December 23, 2010.
- Exhibit 5 Complaint and Notice of Hearing in Case 5-CA-36224, issued January 31, 2011.
- Exhibit 6 Affidavit of Service for the January 31, 2011, Complaint and Notice of Hearing.
- Exhibit 7 Copy of the Settlement Agreement approved by the Regional Director on March 16, 2011.
- Exhibit 8 Regional Director's letter to Respondent KPS dated June 20, 2011.
- Exhibit 9 E-mail from Contracting Officer.
- Exhibit 10 Signed Task Order attached to e-mail from Contracting Officer.

CERTIFICATE OF SERVICE

This is to certify that on this 4th day of November 2011, a copy of Motion to Transfer Case to the Board and For Summary Judgment has been served on the following by mail:

MR. MACON SIMS
KNIGHT PROTECTIVE SERVICES, INC.
4200 PARLIAMENT PLACE
LANHAM, MD 20706

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