

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

SPCA IN CATTARAUGUS COUNTY, INC.

and

Case 03-CA-090311

LINDA VANE

RESPONDENT'S OPPOSITION TO MOTION TO TRANSFER PROCEEDINGS TO BOARD
AND FOR DEFAULT JUDGMENT AND ISSUANCE OF A SUPPLEMENTAL BOARD
DECISION AND ORDER

Now comes SPCA in Cattaraugus County, Inc., through its representative, and files the following opposition:

RESPONDENT OBJECTIONS ON JURISDICTIONAL BASIS

Respondent, SPCA in Cattaraugus County, Inc., is a non-profit corporation. The Certificate of Incorporation provides the purpose for which the organization was formed is the prevention of cruelty to animals. The Certificate of Incorporation states the operations are to be conducted in the County of Cattaraugus. The Bylaws state the corporation is organized for and shall be operated exclusively for charitable purposes as a not-for-profit corporation, and its activities shall be conducted for the aforesaid purpose.

In 2012, the Organization received more than fifty percent of its funding from donations, bequests and fund-raising and over forty percent of the revenue was from program services (adoptions, spay/neuter fees and rescuing stray and/or injured animals located within the boundaries of Cattaraugus County). The organization did not receive any federal funding. In 2012, the total revenue of the organization was \$219,311.

To be subject to the Board's jurisdiction, an Employer must meet the statutory definition of employer in Section 2(2) of the Act, as well as the applicable monetary jurisdiction standard. It is well established that the test used by the Board in determining whether to assert jurisdiction over a nonprofit organization is whether it is engaged in activities which are "commercial in the generally accepted sense". *Ohio Public Interest Campaign and Mark Kaiser*, 284 NLRB.

The Board has taken the position that the "only basis for declining jurisdiction over a charitable organization is finding that its activities do not have a sufficient impact on interstate commerce to warrant the exercise of the Board's jurisdiction". *St Aloysius Home*, 224 NLRB 1344.

The Respondent's operation does not meet the monetary jurisdiction standard nor does the organization's activities have a sufficient impact on interstate commerce to warrant the exercise of the Board's jurisdiction. The Board has established jurisdictional standards for nonprofit organizations such as health care, day care centers and social organizations but the Respondent does not engage in such activities. There appears to be no jurisdictional standards that apply to an organization that is dedicated to prevention of cruelty to animals.

RESPONDENT OBJECTS TO THE CALCULATION OF BACK PAY PERIOD AND GROSS PAYROLL COMPUTATION

The pre-termination earnings of Ms. Vane as shown in Appendix I of the Compliance Specification shows pre-termination earnings starting with the week of March 24, 2012. In calculating pre-termination earnings as shown in Appendix 1, overtime hours were shown. There was no overtime hours worked by Ms. Vane during the time period she was employed. Based on her W-2, Ms. Vane's gross earnings for the period she was employed was \$3,094. If her gross earnings of \$3,094 are divided by the twelve week period, she is alleging she worked, the average weekly gross amount would be \$258, not \$341 as shown in Appendix 1.

**RESPONDENT OBJECTS ON THE BASIS OF SUCH AWARD WOULD CREATE A
SUBSTANTIAL FINANCIAL HARDSHIP ON THE AGENCY.**

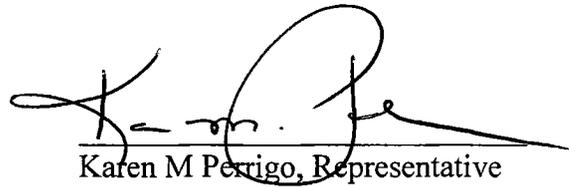
The Respondent's financial condition is dismal, at best. Currently the organization has approximately \$4,000 of liquid assets. The only other asset of the Respondent is the animal shelter which is home to more than 100 animals. The Organization has liabilities exceeding \$100,000. The Organization has been mismanaged for several years and has endured much negative publicity. Unfortunately the only ones being affected by all of this are the animals that the Organization seeks to protect. A new Board has been elected but the journey back to financial stability will be an arduous task. The Respondent does not have the financial resources to pay an award and also pay the employer related taxes.

**RESPONDENT REQUESTS AN OPPORTUNITY TO FILE AN ANSWER AND TO
HAVE THE DEFAULT JUDGMENT VACATED**

Presently, there is a new Board of Directors. The new Board has been diligently working on many of the outstanding issues that were left unresolved by the prior Board. Not only is the Board dealing with the present issue at hand, but also there are tax issues outstanding with the Internal Revenue Service and NYS Department of Taxation and Finance. The Organization was mismanaged by the prior agents. The Respondent is unable to provide information as to why an answer was not timely filed. The individuals alleged to have been the agents of the Respondent in the Complaint have been contacted by the Respondent, however, two of the four parties have not responded and the two that have responded to inquiries have not provided any information as to why an answer was not filed.

In the interest of justice, the Organization should be afforded the opportunity to be heard and present its defenses to the Complaint.

Dated: September 25, 2013

A handwritten signature in black ink, appearing to read "Karen M. Perrigo". The signature is fluid and cursive, with a large loop for the letter 'P'.

Karen M Perrigo, Representative
SPCA in Cattaraugus County
PO Box 65, 20 Water St
Cuba, NY 14727
(585) 968-5292

22222 Void <input type="checkbox"/>		a Employee's social security number ██████-██-3519		OMB No. 1545-0008			
b Employer identification number (EIN) 16-0957154			1 Wages, tips, other compensation 3094.16		2 Federal income tax withheld 333.00		
c Employer's name, address, and ZIP code SPCA IN CATTARAUGUS COUNTY, INC. SPCA IN CATTARAUGUS COUNTY 2944 RT 16 OLEAN NY 14760			3 Social security wages 3094.16		4 Social security tax withheld 129.95		
			5 Medicare wages and tips 3094.16		6 Medicare tax withheld 44.87		
			7 Social security tips		8 Allocated tips		
d Control number			9		10 Dependent care benefits		
e Employee's name, address, and ZIP code LINDA L DEMMONS-VANE 209 EAST STATE STREET APT.#3 OLEAN NY 14760			11 Nonqualified plans		12a See instructions for box 12		
			13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b		
			14 Other		12c		
					12d		
15 State Employer's state ID number NY 008609042 9		16 State wages, tips, etc. 3094.16	17 State income tax 79.15	18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form **W-2** Wage and Tax Statement

2012

Department of the Treasury—Internal Revenue Service

Copy D - For Employer or
Copy 1 - For State, City, or Local Tax Department

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

SPCA IN CATTARAUGUS COUNTY
CASE 03-CA-090311

LINDA VANE'S PRE-TERMINATION EARNINGS

WEEK ENDING	NO. OF HRS. WORKED		HOURLY RATE	WEEKLY EARNINGS
	REG	OT		
3/24/2012	40.00	8.00	\$ 7.25	\$ 277.00
4/7/2012	40.00	4.00	\$ 7.25	\$ 233.50
4/14/2012	40.00		\$ 7.25	\$ 290.00
4/21/2012	40.00		\$ 7.25	\$ 290.00
4/28/2012	40.00		\$ 7.25	\$ 290.00
5/5/2012	40.00	4.00	\$ 7.25	\$ 233.50
5/12/2012	40.00	8.00	\$ 7.25	\$ 277.00
5/19/2012	40.00	8.00	\$ 7.25	\$ 277.00
5/26/2012	40.00	8.00	\$ 7.25	\$ 277.00
6/2/2012	40.00	8.00	\$ 7.25	\$ 277.00
6/9/2012	40.00	8.00	\$ 7.25	\$ 277.00
6/16/2012	40.00	0.50	\$ 7.25	\$ 254.44
AVERAGE				\$ 251.20

NLRB Backpay Calculation

Case Name: SPCA in Cattaraugus County
 Case Number: 03-CA-090311 Backpay period:
 Claimant: Vane, Linda 6/25/12 - 6/17/13

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2012	2	4/7						
2012	2	4/14						
2012	2	4/21						
2012	2	4/28						
2012	2	5/5						
2012	2	5/12						
2012	2	5/19						
2012	2	5/26						
2012	2	6/2						
2012	2	6/9						
2012	2	6/16						
2012	2	6/23						
2012	2	6/30	341					
2012	2	Total	341		341	-	-	341
2012	3	7/7	341					
2012	3	7/14	341					
2012	3	7/21	341					
2012	3	7/28	341					
2012	3	8/4	341					
2012	3	8/11	341					
2012	3	8/18	341					
2012	3	8/25	341					
2012	3	9/1	341					
2012	3	9/8	341					
2012	3	9/15	341					
2012	3	9/22	341					
2012	3	9/29	341					
2012	3	Total	4,436		4,436	-	-	4,436
2012	4	10/6	341					
2012	4	10/13	341					
2012	4	10/20	341					
2012	4	10/27	341					
2012	4	11/3	341					
2012	4	11/10	341					
2012	4	11/17	341					
2012	4	11/24	341					
2012	4	12/1	341					
2012	4	12/8	341					
2012	4	12/15	341					
2012	4	12/22	341					
2012	4	12/29	341					

NLRB Backpay Calculation

Case Name: SPCA in Cattaraugus County

Case Number: 03-CA-090311

Backpay period:

Claimant: Vane, Linda

6/25/12 - 6/17/13

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2012	4	Total	4,436		4,436	-	-	4,436
2013	1	1/5	341					
2013	1	1/12	341					
2013	1	1/19	341					
2013	1	1/26	341					
2013	1	2/2	341					
2013	1	2/9	341					
2013	1	2/16	341					
2013	1	2/23	341					
2013	1	3/2	341					
2013	1	3/9	341					
2013	1	3/16	341					
2013	1	3/23	341					
2013	1	3/30	341					
2013	1	Total	4,436		4,436	-	-	4,436
2013	2	4/6	341					
2013	2	4/13	341					
2013	2	4/20	341					
2013	2	4/27	341					
2013	2	5/4	341					
2013	2	5/11	341					
2013	2	5/18	341					
2013	2	5/25	341					
2013	2	6/1	341					
2013	2	6/8	341					
2013	2	6/15	341					
2013	2	6/22	68					
2013	2	6/29						
2013	2	Total	3,821	792	3,029	-	-	3,029
				Totals	16,677	-	-	16,677

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ORDER SECTION

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DECISION AND ORDER

PERRIGO [REDACTED]

~~~~~Attorneys at Law~~~~~

P.O. Box 65

Twenty Water Street  
Cuba, New York 14727

Phone: (585) 968-5292

To:

From:

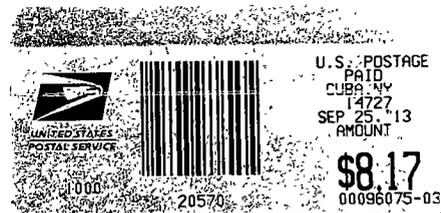
Karen M. Pei  
Certified Public A  
Attorney at Law  
P.O. Box 65  
Cuba, New York, 14727

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Mr. Gary Shinnors  
Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
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Washington, D.C. 20570-0001

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