

9/11/14

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

In the Matter of

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 18  
(Precision Pipeline, LLC)

and

Case 09-CB-109639

STEPHEN A. WILTSE, AN INDIVIDUAL

and

Case 09-CB-118659

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 18  
(Rockford Corporation)

and

GARY LANOUX, AN INDIVIDUAL

REPLY IN OPPOSITION TO PIPELINE CONTRACTORS'  
MOTION TO STRIKE AND FOR SANCTIONS

On September 9, 2014, Pipeline Contractors Association (PLCA) filed a motion to strike exceptions and for sanctions to be imposed on the undersigned for failure to serve it with General Counsel's motion for extension of time to file exceptions and exceptions and a brief in support of exceptions. For the reasons set forth below, PLCA's Motion should be denied.

During the hearing in this matter, Administrative Law Judge David Goldman ruled in response to PLCA's motion to intervene, as follows regarding the very limited role that he would permit PLCA to participate in this matter:

So I'm granting intervention in the following limited fashion. [PLCA] can participate in the trial to argue that its employer members have a proprietary and confidentiality interest in the pre-job conference reports.

[PLCA] can file a post-hearing brief regarding how that interest should affect the Union's liability. Or probably more pertinently any remedy in this case.

In terms of the trial [PLCA] can, if it wants, argue or put on evidence regarding the existence of this proprietary and confidential interest.

And I don't anticipate that [PLCA] would require more than a single witness to do this. But we'll take that as it comes.

And additionally, since [PLCA] is here they will be permitted to question witnesses called by other parties regarding the issue of the employer's interest in not having prehearing reports disclosed, beyond disclosure to the Union. So that's my ruling on the motion to intervene. (Tr. 23-24) <sup>1/</sup>

PLCA argues vehemently about a party's right to be afforded proper notice of a case against it, but ignores one significant fact – this is not a case against PLCA. Unlike *Platt Bros.*, 250 NLRB 325 (1980) and Member Kennedy's concurrence in *Graphic Arts Intern.*, 208 NLRB 37 (1973) cited by PLCA in its Motion, there has been no failure to serve the one and only respondent in this case, International Union of Operating Engineers Local 18 (Respondent). The inadvertent failure to serve PLCA, given its very limited role in this matter, while regrettable, is not remotely analogous to a failure to serve a respondent.

Further, PLCA's accusation that the undersigned "intentionally" failed to serve it with the motion for extension of time to file exceptions, exceptions, or the brief in support of exceptions is outrageous, patently false and defies credulity. Inasmuch as PLCA and Respondent have made substantially the same arguments throughout this proceeding, it boggles the mind as to what strategic advantage would possibly be gained by intentionally failing to serve documents on PLCA, especially given its very limited role in these proceedings. The failure to serve certain documents on PLCA appears, at most, to be the result of unfortunate and inadvertent administrative errors which took place in the confusion which resulted from this case being reassigned from Counsel for the General Counsel Catherine Terrell, who tried the case and filed the brief with the Administrative Law Judge, to the undersigned when the former transferred to a different Regional Office. The undersigned is not entirely certain how PLCA was omitted from

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<sup>1/</sup> Citations to the hearing transcript will be designated as (Tr. \_\_\_\_).

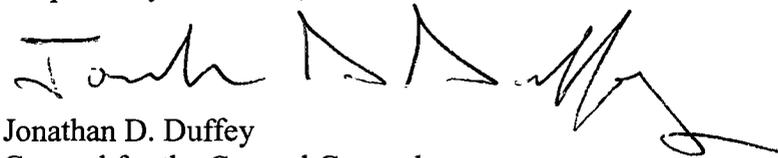
certain service sheets, the incorrect service sheet may have been used or the Agency's NxGen participant list may not have been updated after PLCA made its appearance and was allowed to intervene. Regardless of the reasons, unequivocally the omission of PLCA from the service sheet was not intentional.

Oddly, PLCA, upon observing that it had not been served, never contacted the undersigned to seek agreement about an extension of time to file an answering brief. Further, PLCA has not indicated what arguments it would make about its employer members' alleged proprietary and confidentiality interest in pre-job conference reports that it did not already make in its brief to the Administrative Law Judge. Despite the foregoing, Counsel for the General Counsel would be amenable to the Board granting additional time for PLCA to file an answering brief to General Counsel's Exceptions and supporting brief, consistent with its limited role granted by Judge Goldman.

For the above reasons, PLCA's motion should be denied. The striking of exceptions and imposition of sanctions would be entirely inappropriate given the fact that Respondent was appropriately served, that the failure to serve PLCA was unintentional, and that this situation can be easily remedied with the grant of additional time for PLCA to file an answering brief.

Dated at Cincinnati, Ohio this 11<sup>th</sup> day of September 2014.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

September 11, 2014

I hereby certify that I served Counsel for the General Counsel's Reply in Opposition to Pipeline Contractors' Motion to Strike and for Sanctions by electronic mail to the following at the addresses listed below:

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Respectfully submitted,



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