

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

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*
PORTER INDUSTRIES ENVIRONMENTAL *
SERVICES COMPANY *
*
and *
*
INTERNATIONAL UNION, UNITED *
AUTOMOBILE, AEROSPACE AND *
AGRICULTURAL IMPLEMENT WORKERS *
OF AMERICA, AFL-CIO (UAW), LOCAL 1921 *
*
* * * * *

Case 15-CA-160559

**MOTION TO TRANSFER TO THE BOARD AND
FOR DEFAULT JUDGMENT FOR FAILURE TO FILE AN ANSWER**

Counsel for the General Counsel, pursuant to Sections 102.20, 102.24, and 102.50 of the Board’s Rules and Regulations, moves that the proceedings in the above-captioned case be transferred to the Board for a final determination on the basis of the pleadings previously filed. Attached to this Motion as exhibits, and incorporated herein by reference, are copies of the Amended Complaint and other relevant documents described below.

Counsel for the General Counsel further moves that, upon transfer of the proceedings to the Board, the Board issue an appropriate order to show cause why this motion should not be granted, and that unless Porter Industries Environmental Services Company (Respondent), shows good cause for failing to file an answer within the time specified by Section 102.20 of the Board’s Rules and Regulations, all the allegations contained in the Amended Complaint be deemed to be admitted true and an order entered providing for an appropriate remedy, without the holding of a hearing or without taking evidence in support of the allegations in the Amended

Complaint. In support of this Motion, Counsel for the General Counsel alleges and shows as follows:

1. On December 28, 2015, Acting Regional Director Sandra L. Hightower issued a Complaint and Notice of Hearing (Complaint) in this matter alleging that Porter Industries, Inc., violated Sections 8(a)(1) and (5) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. A copy of the Complaint was served by certified U.S. mail to Porter Industries, Inc., at 650 Poydras Street, Suite 1400, New Orleans, Louisiana 70130. The Complaint and Affidavit of Service are attached as Exhibits 1(a) and 1(b), respectively. The certified mail receipt confirming delivery and receipt of the Complaint was received by the Region on February 1, 2016. A copy of the certified mail receipt is attached as Exhibit 1(c).
2. On January 10, 2016, Porter Industries Inc. filed a Motion to Dismiss, alleging that Porter Industries Inc. was not the correct party in this matter. Along with the Motion, Porter Industries, Inc., out of an abundance of caution, filed an answer. Porter Industries, Inc., denied most allegations, either because Porter Industries, Inc., was “without sufficient information to admit or deny the allegation,” or because Porter Industries, Inc., was not the correct party. A copy of the Motion to Dismiss (without exhibits) is attached as Exhibit 2; a copy of the answer is filed as Exhibit 3.
3. On January 20, 2016, Regional Director M. Kathleen McKinney issued an Amended Complaint in this matter correcting the name and alleging that Respondent violated Sections 8(a)(1) and (5) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. A copy of the Amended Complaint was served by certified U.S. mail to Respondent at 650 Poydras Street, Suite 1400, New Orleans, Louisiana 70130. The Amended

Complaint and Affidavit of Service are attached as Exhibits 4(a) and 4(b), respectively. The certified mail receipt confirming delivery and receipt of the Amended Complaint was received by the Region on February 7, 2016. A copy of the certified mail receipt is attached as Exhibit 4(c).

4. Simultaneously, on January 20, 2016, Counsel for the General Counsel filed a Response to Porter Industries Inc.'s Motion to Dismiss, noting that the Amended Complaint had been issued correctly naming Respondent, and that, given this, the Motion to Dismiss was moot. A copy of the Response to Motion to Dismiss is attached as Exhibit 5.
5. On February 19, 2016, the Board's Associate Executive Secretary issued a letter noting that the Motion to Dismiss was moot and would not be ruled on by the Board. A copy of the letter is attached as Exhibit 6.
6. On February 1, 2016, Regional Director M. Kathleen McKinney issued an Order extending the time for Respondent to file an answer to the Amended Complaint to March 2, 2016. A copy of the Order is attached as Exhibit 7.
7. To date, Respondent has not filed an answer to the Amended Complaint.
8. Section 102.20 of the Board's Rules and Regulations, provides as follows:

The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

9. Section 10280.4 of the Board's Casehandling Manual states that all rules and regulations that pertain to answering a complaint also apply to an amended complaint.

10. While Porter Industries Inc. filed a document purporting to be an answer, the basis for the responses in the answer was that Porter Industries Inc. was not Respondent, and not based on the accuracy of the allegations. Thus, aside from not being filed by Respondent, the document filed by Porter Industries Inc. does not address the allegations contained in the Amended Complaint and is not a sufficient answer as required by Section 102.20 of the Board's Rules and Regulations.

11. Consequently, Respondent, having been duly served, has failed and refused to file an answer to the Amended Complaint. Therefore, all allegations in the Amended Complaint must be deemed admitted as true and no issue of fact exists warranting or requiring a hearing.

Accordingly, 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 Amended Complaint, without taking evidence or giving Respondent further notice.

Signed and dated at New Orleans, Louisiana, this 22nd day of March, 2016.

/s/ Joseph A. Hoffmann, Jr.

Joseph A. Hoffmann, Jr.
Counsel for the General Counsel
National Labor Relations Board
Region 15
600 South Maestri Place, 7th Floor
New Orleans, Louisiana 70130-3414
504-589-6392
joseph.hoffmann@nlrb.gov

Certificate of Service

I hereby certify that, on March 22, 2016, I have caused to be served a copy of the foregoing Motion for Default Judgment on the following individuals by regular and certified US Mail (Email addresses are not available for all parties):

Kennith Porter, Owner of Respondent
Suite 1400
650 Poydras Street
New Orleans, Louisiana 70130

Carl Butler, Registered Agent of Respondent
Suite 301
3421 North Causeway Boulevard
Metairie, Louisiana 70002

Kenneth Dearing, Representative of Charging Party
International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America, AFL-CIO
721 Dunn Road
Hazelwood, Missouri 63042

/s/ Joseph A. Hoffmann, Jr.

Joseph A. Hoffmann, Jr.
Counsel for the General Counsel

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

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PORTER INDUSTRIES INC. *
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INTERNATIONAL UNION, UNITED *
AUTOMOBILE, AEROSPACE AND *
AGRICULTURAL IMPLEMENT WORKERS *
OF AMERICA, AFL-CIO (UAW), LOCAL 1921 *
*
* * * * *

Case 15-CA-160559

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO (UAW), Local 1921 (Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Porter Industries Inc. (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Union on September 22, 2015, and a copy was served on Respondent by U.S. mail on September 23, 2015.

2(a) At all material times, Respondent has been a corporation with a job site at the Michoud Assembly Facility (MAF) in New Orleans, Louisiana (Respondent’s facility), and has been engaged in the business of providing janitorial and related environmental services.

Exhibit 1(a)

(b) Annually, Respondent, in conducting its operations described above in paragraph 2(a), provided services valued in excess of \$50,000 for Jacobs Technology, Inc., an enterprise within the State of Louisiana.

(c) Jacobs Technology, a Tennessee corporation, is engaged in the business of facility maintenance and operations for the manufacturing support and facility operations contract at the MAF.

(d) Annually, in conducting its operations described above in paragraph 2(c), Jacobs Technology purchased and received goods in excess of \$50,000 directly from points located outside the State of Louisiana.

3. 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.

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

5. At all material times, an unnamed attorney held the position of Respondent's attorney and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

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

Included: all janitorial employees at the MAF; Excluded: all other employees, office clerical employees, guards and supervisors as defined by the Act.

7. On May 3, 2010, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

8. At all times since May 3, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

9(a) About July 6, 2015, the Union, by email, requested that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(b) Since about July 6, 2015, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit.

10. By the conduct described above in paragraph 9, Respondent has been failing and refusing to bargain collectively and in good faith 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 January 11, 2016, or postmarked on or before January 10, 2016.**

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File 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.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on April 4, 2016, at 10:00 a.m. (CDT), at Courtroom Regional Office, National Labor Relations, Board, 600 South Maestri Place, 7th Floor, New Orleans, Louisiana, 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: December 28, 2015

/s/

**SANDRA L. HIGHTOWER
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 15
600 S MAESTRI PLACE, 7TH FLOOR
NEW ORLEANS, LA 70130-3414**

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

PORTER INDUSTRIES INC.

and

Case 15-CA-160559

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, AFL-CIO (UAW), LOCAL 1921

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing with forms NLRB-4338, Important Notice, and NLRB-4668 attached, dated December 28, 2015.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on December 28, 2015, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

KEN PORTER , OWNER
PORTER INDUSTRIES INC.
650 POYDRAS ST STE 1400
NEW ORLEANS, LA 70130-6116

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

MICHAEL L. FANTACI , ESQ.
LEBLANC PARTNERS, LLC
3421 N CAUSEWAY BLVD STE 301
METAIRIE, LA 70002-3720

REGULAR MAIL

KENNETH E. DEARING
INTERNATIONAL REPRESENTATIVE
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO (UAW)
721 DUNN RD
HAZELWOOD, MO 63042-1740

CERTIFIED MAIL

NIRAJ GANATRA , GENERAL COUNSEL
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO
8000 E JEFFERSON AVE
DETROIT, MI 48214-3963

REGULAR MAIL

December 28, 2015

Donna M. Simmons, Designated Agent of
NLRB

Date

Name

/s/

Signature

PTER 2625 T000 02T2 4T02

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Postage	\$
Certified Fee	<input checked="" type="checkbox"/>
Return Receipt Fee (Endorsement Required)	<input checked="" type="checkbox"/>
Restricted Delivery Fee (Endorsement Required)	

Postmark Here

Total Post:

Sent To
Street & Apt. or PO Box N
City, State, Z

KEN PORTER, OWNER
PORTER INDUSTRIES INC.
650 POYDRAS ST STE 1400
NEW ORLEANS, LA 70130-6116

PS Form 3800, July 2014

See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Postage	\$
Certified Fee	<input checked="" type="checkbox"/>
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee	

Postmark Here

KENNETH E. DEARING
INTERNATIONAL REPRESENTATIVE
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO (UAW)
721 DUNN RD
HAZEL WOOD, MO 63042-1740

PS Form 3800, July 2014

See Reverse for Instructions

T0E9 2625 T000 02T2 4T02

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece or on the front if space permits.

1. Article Addressed to:

KEN PORTER, OWNER
PORTER INDUSTRIES INC.
650 POYDRAS ST STE 1400
NEW ORLEANS, LA 70130-6116

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
 B. Received by (Printed Name) Addressee
 C. Date of Delivery
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No.

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

2. Article Number:

(Transfer from service label)

7014 2120 0001 5292 6318

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15-0

DNMS

Ken Porter

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

PORTER INDUSTRIES, INC.

*

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And

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Case No. 15-CA-160559

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INTERNATIONAL UNION, UNITED

*

AUTOMOBILE, AEROSPACE AND

*

AGRICULTURAL WORKERS OF

*

AMERICA, AFL-CIO (UAW) LOCAL 1921

*

MOTION TO DISMISS

NOW COMES, through undersigned counsel, Respondent PORTER INDUSTRIES, INC. (“Porter”) and respectfully files this motion to dismiss the *Complaint and Notice of Hearing* issued in the above-captioned matter on the grounds that Porter is not the proper party employer and the Union fails to state a claim against Porter upon which relief can be granted.

UAW Local 1921 (“Union”) is the certified bargaining representative of a unit comprised of all janitorial employees of the “Employer” at its Michoud facility in New Orleans, Louisiana. The jointly-defined “Employer” is “Jacobs Technology, Inc./Porter Industries Environmental Services, Co.” A copy of the May 3, 2010 *Certification of Representation* is attached as Exhibit 1. Porter Industries Environmental Services, Co. (“PIES”) is a registered Louisiana corporation.¹

The Union and PIES are parties to a collective bargaining agreement dated November 20, 2010 (“CBA”). Copies of the pertinent portions of the CBA are attached as Exhibit 2.

¹ Jacobs Technology, Inc. was the prime contractor with NASA under the agency’s former “MSFOC” facility maintenance contract. PIES was a subcontractor to Jacobs. In 2015, the new facility maintenance contract (“SACOM”) was awarded to another prime contractor, and PIES was not retained by the new prime contractor. PIES’ final day of operations at the Michoud facility is scheduled to be January 31, 2016.

This dispute arises out of the 2015 negotiations between the Union and PIES for a new CBA after the expiration of the November 20, 2010 agreement. Despite PIES's participation in multiple in-person meetings with representatives of the Union and PIES's other good faith efforts to negotiate a new CBA, the Union filed Charge 15-CA-160559 alleging that PIES refused to meet for bargaining over a successor contract.

In both the Charge and the Complaint, the employer is misidentified as "Porter Industries, Inc." Porter Industries, Inc. is a separate Louisiana corporation. Both the Union and the Regional Director are well aware that PIES, and not Porter, is the proper party employer of the bargaining unit employees at issue. In addition to the attached *Certification of Representation* and the CBA, please see Charge Nos. 061927, 061931, 063226, 067880, 067900, 074683, 139985, and 147955. Copies of these charges are attached as Exhibit 3. In each of these charges, the proper employer is identified as PIES.

For the reasons stated above, named Respondent Porter Industries, Inc. respectfully requests that the above-referenced *Complaint and Notice of Hearing* as well as the underlying Charge No. 15-CA-160559 be dismissed.

Respectfully submitted, this 10th day of January, 2016.



MICHAEL L. FANTACI (La. Bar No. 25043)
LEBLANC FANTACI VILLIO, LLC
3421 N. Causeway Blvd. Ste. 201
Metairie, LA 70002
Tel.: (504) 828-1010
Fax: (504) 828-1079
mfantaci@lfvlaw.us

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing has been served upon the following by U. S. Mail, postage pre-paid and properly addressed, this 10th day of January, 2016:

Kenneth E. Dearing
International Representative
United Auto Workers
721 Dunn Rd.
Hazelwood, MO 63042-1740

Niraj Ganatra
General Counsel
United Auto Workers
8000 E. Jefferson Ave.
Detroit, MI 48214-3963

Sandra L. Hightower
Acting Regional Director
NLRB – Region 15
600 Maestri Place, 7th Floor
New Orleans, LA 70130-3414



A handwritten signature in blue ink, appearing to read 'Sandra L. Hightower', is written over a horizontal line.

*
**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

PORTER INDUSTRIES, INC.

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And

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Case No. 15-CA-160559

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**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL WORKERS OF
AMERICA, AFL-CIO (UAW) LOCAL 1921**

*

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ANSWER TO COMPLAINT

NOW COMES, through undersigned counsel, Respondent PORTER INDUSTRIES, INC. (“Porter”) and respectfully files this answer to the *Complaint and Notice of Hearing* issued in the above-captioned matter.

As an initial matter, Porter affirmatively denies that it is the proper party employer in this action, and Porter represents that it has electronically filed a *Motion to Dismiss* this matter on January 10, 2016, which was assigned Confirmation No. 1000047838. Out of an abundance of caution and in recognition of the representation in Section 102.20 of the Board’s Rules and Regulations that failure to answer will result in the allegations in the complaint being admitted, Porter responds to the numbered paragraphs of the *Complaint and Notice of Hearing* as follows:

1.

Porter admits that Charge No. 15-CA-160559 states that it was filed on September 22, 2015. Porter is without sufficient information to admit or deny whether Porter was served on September 23, 2015.

Exhibit 3

2.

The allegations in Paragraph 2(a) and 2(b) are denied. Porter is without information sufficient to admit or deny the allegations in Paragraphs 2(c) and 2(d).

3.

The allegations in Paragraph 3 are denied with respect to the bargaining unit employees at issue.

4.

Porter is without information sufficient to admit or deny the allegations in Paragraph 4.

5.

Porter denies that any of its attorneys or any of its officers, agents or representatives acted on behalf of Porter with respect to the incidents at issue in this complaint.

6.

The allegations in Paragraph 6 are denied.

7.

Porter denies the allegations in Paragraph 7 insofar as they pertain to Porter; however, Porter admits that, to its knowledge, the Union was certified as the collective bargaining representative of a unit of employees employed by another employer on May 3, 2010.

8.

Porter denies the allegations in Paragraph 8 insofar as they pertain to Porter; however, Porter admits that, to its knowledge, the Union has remained the collective bargaining representative of a unit of employees employed by another employer since May 3, 2010.

9.

The allegations in Paragraphs 9 are denied.

10.

The allegations in Paragraph 10 are denied.

11.

The allegations in Paragraph 11 are denied.

Affirmative Defenses

First Affirmative Defense:

The Union fails to state a claim upon which relief can be granted against Porter.

Second Affirmative Defense:

Any failure to bargain as alleged in the complaint was the fault of the Union or other third persons for whom Porter cannot be held liable.

Third Affirmative Defense:

Porter is not the employer of the employees identified in the complaint and is not the proper party respondent in this matter.

Respectfully submitted, this 10th day of January, 2016.



MICHAEL L. FANTACI (La. Bar No. 25043)
LEBLANC FANTACI VILLIO, LLC
3421 N. Causeway Blvd. Ste. 201
Metairie, LA 70002
Tel.: (504) 828-1010
Fax: (504) 828-1079
mfantaci@lfvlaw.us

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the above and foregoing has been served upon the following by U. S. Mail, postage pre-paid and properly addressed, this 10th day of January, 2016:

Kenneth E. Dearing
International Representative
United Auto Workers
721 Dunn Rd.
Hazelwood, MO 63042-1740

Niraj Ganatra
General Counsel
United Auto Workers
8000 E. Jefferson Ave.
Detroit, MI 48214-3963

Sandra L. Hightower
Acting Regional Director
NLRB – Region 15
600 Maestri Place, 7th Floor
New Orleans, LA 70130-3414



2(a) At all material times, Respondent has been a corporation with a job site at the Michoud Assembly Facility (MAF) in New Orleans, Louisiana (Respondent's facility), and has been engaged in the business of providing janitorial and related environmental services.

(b) Annually, Respondent, in conducting its operations described above in paragraph 2(a), provided services valued in excess of \$50,000 for Jacobs Technology, Inc., an enterprise within the State of Louisiana.

(c) Jacobs Technology, a Tennessee corporation, is engaged in the business of facility maintenance and operations for the manufacturing support and facility operations contract at the MAF.

(d) Annually, in conducting its operations described above in paragraph 2(c), Jacobs Technology purchased and received goods in excess of \$50,000 directly from points located outside the State of Louisiana.

3. 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.

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

5. At all material times, an unnamed attorney held the position of Respondent's attorney and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

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

Included: all janitorial employees at the MAF; Excluded: all other employees, office clerical employees, guards and supervisors as defined by the Act.

7. On May 3, 2010, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

8. At all times since May 3, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

9(a) About July 6, 2015, the Union, by email, requested that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(b) Since about July 6, 2015, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit.

10. By the conduct described above in paragraph 9, Respondent has been failing and refusing to bargain collectively and in good faith 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 amended complaint. The answer must be **received by this office on or before February 3, 2016, or postmarked on or before February 2, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File 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 amended complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **April 4, 2016, at 10:00 a.m. (CDT), at Courtroom Regional Office, National Labor Relations, Board, 600 South Maestri Place, 7th Floor, New Orleans, Louisiana**, 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: January 20, 2016

/s/

**M. KATHLEEN McKINNEY
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 15
600 SOUTH MAESTRI PLACE, 7th FLOOR
NEW ORLEANS, LA 70130-3414**

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

PORTER INDUSTRIES ENVIRONMENTAL SERVICES
COMPANY

and

Case 15-CA-160559

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO (UAW), LOCAL 1921

AFFIDAVIT OF SERVICE OF: Amended Complaint and Notice of Hearing with forms NLRB-4338, Important Notice, and NLRB-4668 attached, dated January 20, 2016.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 20, 2016, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

KEN PORTER , OWNER
PORTER INDUSTRIES ENVIRONMENTAL
SERVICES COMPANY
650 POYDRAS ST STE 1400
NEW ORLEANS, LA 70130-6116

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

MICHAEL L. FANTACI, ESQ.
LEBLANC PARTNERS, LLC
3421 N CAUSEWAY BLVD STE 301
METAIRIE, LA 70002-3720

REGULAR MAIL

KENNETH E. DEARING
INTERNATIONAL REPRESENTATIVE
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO (UAW)
721 DUNN RD
HAZELWOOD, MO 63042-1740

CERTIFIED MAIL

NIRAJ GANATRA , GENERAL COUNSEL
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO
8000 E JEFFERSON AVE
DETROIT, MI 48214-3963

REGULAR MAIL

January 20, 2016

Donna M. Simmons, Designated Agent of
NLRB

Date

Name

/s/

Signature

7014 2120 0001 5292 9838

U.S. Postal Service™
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Re: Porter Industries, Attn: 15-CA 860559
 Amended CNOH

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Postmark
 CM, 8/14

KENNETH E. DEARING
 INTERNATIONAL REPRESENTATIVE
 INTERNATIONAL UNION, UNITED AUTOMOBILE,
 AEROSPACE AND AGRICULTURAL IMPLEMENT
 WORKERS OF AMERICA, AFL-CIO (UAW)
 721 DUNN RD
 HAZEL WOOD, MO 63042-1740

See Reverse for Instructions

7014 2120 0001 5292 9838

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com®

Re: Porter Industries, Attn: 15-CA 860559
 Amended CNOH

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
 Here
 CM/RRR

Sent To: KEN PORTER, OWNER
PORTER INDUSTRIES ENVIRONMENTAL
SERVICES COMPANY
 Street & Apt. No., or PO Box No. 650 POYDRAS ST STE 1400
 City, State, ZIP+4 NEW ORLEANS, LA 70130-6116

PS Form 3800, July 2014

See Reverse for Instructions

Jan. 20, 2016 JAH/dms

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
 B. Received by (Printed Name) Ken Porter C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes No

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 KEN PORTER, OWNER
 PORTER INDUSTRIES ENVIRONMENTAL
 SERVICES COMPANY
 650 POYDRAS ST STE 1400
 NEW ORLEANS, LA 70130-6116

2. Article Number (Transfer from service label) 7014 2120 0001 5292 9838
 PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Exhibit 4(b)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

* * * * *
*
PORTER INDUSTRIES ENVIRONMENTAL *
SERVICES COMPANY *
*
and *
*
INTERNATIONAL UNION, UNITED *
AUTOMOBILE, AEROSPACE AND *
AGRICULTURAL IMPLEMENT WORKERS *
OF AMERICA, AFL-CIO (UAW), LOCAL 1921 *
*
* * * * *

Case 15-CA-160559

GENERAL COUNSEL’S RESPONSE TO MOTION TO DISMISS

The General Counsel, through the undersigned, files this response to the Motion to Dismiss filed by Porter Industries, Inc. (“Porter Inc.”), on January 10, 2016. Porter Inc. filed the Motion on the grounds that Porter Inc. is not the employer of the employees in the relevant certified bargaining unit (as described in Exhibit 1 of the Motion). However, as explained below, the Motion should be dismissed.

On January 15, 2016, the Charging Party in this case filed an amended charge correctly naming Porter Industries Environmental Services Company (“Porter LLC”) as the employer of the relevant bargaining unit. On January 20, 2016, the General Counsel amended the Complaint correctly naming Porter LLC as the employer of the bargaining unit. Consequently, because Porter Inc. is no longer named as a party in this matter, Porter Inc.’s Motion to Dismiss the Complaint is moot and should be dismissed.

Further, the amendment correctly naming Porter LLC as the party will not be *adding* them to the proceeding in an untimely manner and will not work a hardship or be prejudicial to

Porter LLC because Porter LLC had timely “actual notice” of the allegations against it. In a case remarkably similar to the current matter, *Peterson Construction Company*, 106 NLRB 850, 850-51 (1953), the Board made such a finding.

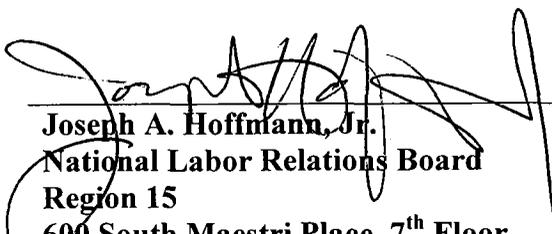
In the case, the respondent, “Peterson Construction Company,” filed an exception to the administrative law judge’s recommendation that the respondent violated the Act and moved that the complaint be dismissed because no charge had been filed and served on them within six months of the alleged violations. The original charge, timely filed, incorrectly named “Ole Peterson, Inc.,” as the employer. Subsequently, one month after the Section 10(b) period expired, the charge was amended to correctly name the respondent. Both charges were addressed to the respective companies at the address which they shared. Both charges described the employer as being in the construction business, which only the respondent was. After the original charge was filed, a representative of the company, on the letterhead of Ole Peterson, acknowledged receipt of the charge and noted that it was being referred to an attorney, the attorney who participated in the investigation of the charge. Subsequently, the attorney notified the investigating agent that the incorrect party was named in the charge and the charge was amended. In allowing the amendment, the Board wrote:

It is clear from these facts, and the Respondent does not deny, that the Respondent had notice of the charge within the prescribed period. Furthermore, the Respondent makes no contention that it was in any way misled or otherwise prejudiced by the proceedings relative to the original charge. Its position would thus appear to be that actual notice was not to be equated to legal notice and that it was entitled to the latter. We cannot subscribe to the Respondent’s views. Where, as here, the error is one of misnomer and the proper Respondent has actual notice of the charge and of the obvious misnomer, to hold that the statutory requirements of service are not met is to project legalism to an unwarranted length. Accordingly, we find that the charge was timely filed and service was made upon the Respondent within the meaning of Section 10 (b) of the Act. We shall deny the motion to dismiss on this ground. [*Id.* at 851]

A similar finding should be made in the current matter. In the current matter, the Motion asserts only that the incorrect party was named in the Charge and Complaint; it does not argue that a hardship has been, or would be, visited upon either Porter Inc., or Porter LLC, if the Charge and Complaint are amended. Further, for the reasons described above in *Peterson Construction Company*, such an argument would not be persuasive. Both Porter Inc. and Porter LLC are located at the same address, at which the Charge and Complaint were served, and are owned by the same individual, so that Porter LLC was aware of the charge and the nature of it from the beginning. The original charge noted that the employer was a government contractor performing janitorial services, the business of Porter LLC, Not Porter Inc. Additionally, from the nature of the allegation, it would have been clear to Porter LLC that Porter LLC was the intended party, not Porter Inc. This is proven by the fact that Porter LLC participated in the investigation, through the same legal counsel who filed the instant motion, providing both information and arguments in its defense, none of which was that the party named in the Charge was not the employer of the certified bargaining unit.

Therefore, the General Counsel asks that the Motion be denied and that the (Amended) Complaint not be dismissed.

Dated: January 20, 2016



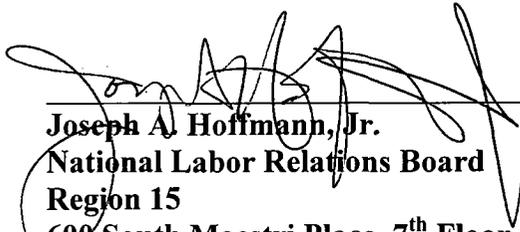
Joseph A. Hoffmann, Jr.
National Labor Relations Board
Region 15
600 South Maestri Place, 7th Floor
New Orleans, LA 70130-3414
504-589-6392 (direct line)
504-589-4069 (facsimile)
joseph.hoffmann@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Motion Dismiss has been served on the following parties, by email, on January 20, 2016.

Michael L. Fantaci
mfantaci@lflaw.us

Kenneth Dearing
kdearing@uaw.net



Joseph A. Hoffmann, Jr.
National Labor Relations Board
Region 15
600 South Maestri Place, 7th Floor
New Orleans, LA 70130-3414
504-589-6392 (direct line)
504-589-4069 (facsimile)
joseph.hoffmann@nlrb.gov



United States Government

NATIONAL LABOR RELATIONS BOARD
1015 HALF STREET, SE
WASHINGTON DC 20570

February 19, 2016

Michael L. Fantaci
LeBlanc Fantaci Villio, LLC
3421 N. Causeway Blvd. Ste. 201
Metairie, LA 70002

RE: Porter Industries Environmental Services Co., 15-CA-160559

Dear Mr. Fantaci:

This letter acknowledges receipt of Porter Industries, Inc.'s ("Porter") Motion to Dismiss in the subject case dated January 10, 2016. By response filed on January 20, 2016, Counsel for the General Counsel states that the Region has amended the complaint to correctly name Porter Industries Environmental Services Company as the employer of the bargaining unit in this matter, and thus Porter's Motion to Dismiss should be dismissed as moot. In light of the amended complaint, Porter's Motion to Dismiss is now moot and will not be ruled on by the Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "Farah Z. Qureshi", written over a horizontal line.

Farah Z. Qureshi
Associate Executive Secretary

cc: Parties
Regional Director, Region 15

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

* * * * *
*
PORTER INDUSTRIES ENVIRONMENTAL *
SERVICES COMPANY *
*
and *
*
INTERNATIONAL UNION, UNITED *
AUTOMOBILE, AEROSPACE AND *
AGRICULTURAL IMPLEMENT WORKERS *
OF AMERICA, AFL-CIO (UAW), LOCAL 1921 *
*
* * * * *

Case 15-CA-160559

**ORDER GRANTING EXTENSION
OF TIME TO FILE ANSWER**

IT IS HEREBY ORDERED that the time for filing of an answer in this matter be,
and the same hereby is, extended from February 3, 2016 until March 2, 2016.

Dated: February 1, 2016

/s/

**SUSAN O. CROCHET
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 15
600 S. MAESTRI PLACE, 7TH FLOOR
NEW ORLEANS, LOUISIANA 70130-3408**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

PORTER INDUSTRIES ENVIRONMENTAL SERVICES
COMPANY
and

Case 15-CA-160559

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO (UAW), LOCAL 1921

AFFIDAVIT OF SERVICE OF: Copy of Order Granting Extension of Time to File Answer, dated February 1, 2016.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 1, 2016, I served the above-entitled document(s) by **regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

KEN PORTER , OWNER
PORTER INDUSTRIES ENVIRONMENTAL
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650 POYDRAS ST STE 1400
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NIRAJ GANATRA , GENERAL COUNSEL
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, AFL-CIO
8000 E JEFFERSON AVE
DETROIT, MI 48214-3963

February 1, 2016

Donna M. Simmons, Designated Agent of
NLRB

Date

Name

/s/

Signature