

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

WAYRON, LLC

and

Case 19-CA-32983

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS OF AMERICA, LOCAL 104; THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 160, LOCAL LODGE 1350; AND THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 5

**CHARGED PARTY/RESPONDENT
WAYRON, LLC'S REPLY TO
GENERAL COUNSEL'S OPPOSITION
TO CHARGED
PARTY/RESPONDENT'S MOTION
FOR RECONSIDERATION OF
BOARD'S 8/2/2016 ORDER**

Charged Party/Respondent Wayron, LLC, by and through its attorney, Kristin L. Bremer Moore, hereby submits its Reply to the General Counsel's Opposition to Wayron's Motion for Reconsideration in this case.

General Counsel takes issue with Wayron's Motion for Reconsideration for three reasons.

First, General Counsel accuses Wayron of misfiling its motion as a backdoor attempt to re-open the record by providing the Board notice of changes in circumstances that occurred *while* the case was pending before the Board. Contrary to the General Counsel's concerns of the propriety of Wayron's motives, Wayron simply submitted its Motion for Reconsideration in an attempt to efficiently adjudicate this matter, as courts expect the Board to do. *See NLRB v. Thill, Inc.*, 980 F.2d 1137, 1142-43 (1992) (Court of Appeals refused to enforce Board's order requiring employer to bargain with the union because of a change in circumstances); *Montgomery Ward and Co. v. NLRB*, 904 F.2d 1156, 1160 (7th Cir. 1990) (court refused to enforce order to bargain due to the passage of time and a change in circumstances).

PAGE 1 – CHARGED PARTY/RESPONDENT WAYRON, LLC'S REPLY TO GENERAL COUNSEL'S OPPOSITION TO CHARGED PARTY/RESPONDENT'S MOTION FOR RECONSIDERATION OF BOARD'S 8/2/2016 ORDER

The Ninth Circuit has expressed value in the Board considering the change in circumstances before the court reviews the Board's bargaining order. *See also L'Eggs Products, Inc. v. NLRB*, 619 F.2d 1337, 1352 (9th Cir. 1980) (court noting that the Board should consider subsequent event, up to the time of its decision, in rendering a bargaining order).

Second, the General Counsel contends that any change in the circumstances between Wayron and the Boilermakers, Machinists and Painters Unions ("the Unions"), such as a disclaimer of interest and settlement with the respective pension funds for subsequent withdrawal liability, be addressed in the compliance stage of this matter. As stated above, this matter will be more efficiently adjudicated if the Board issues an order that is possible to implement. As it currently stands, the Board's Order that Wayron recognize, bargain with, and provide financial information to Unions that no longer represent Wayron's employees and pay into pension funds that are no longer actively engaged with Wayron, are not possible to implement. Given the complete change in circumstances since the matter was heard and decided by the ALJ, it is better to send this matter to the compliance phase with a Board order that is possible to implement.

Third, the General Counsel questions whether the Painters have actually disclaimed interest in Wayron's employees and whether Wayron and the Painters' pension have truly settled the withdrawal liability. Wayron questions the General Counsel's questioning. It is clear that none of the Unions notified the General Counsel of their respective disclaiming of interest during the pendency of this matter, nor did the General Counsel attempt to contact the Unions at any time after the hearing, including when it received Wayron's Motion for Reconsideration to determine if Wayron's assertions were accurate. If there is any confusion about whether the Painters disclaimed interest by their letter dated January 13, 2014 (Exhibit 3 to Kristin Bremer Moore's Declaration in Support of Wayron's Motion for Reconsideration), it could have been easily clarified had the General Counsel simply contacted the Painters, a party it

PAGE 2 – CHARGED PARTY/RESPONDENT WAYRON, LLC'S REPLY TO GENERAL COUNSEL'S OPPOSITION TO CHARGED PARTY/RESPONDENT'S MOTION FOR RECONSIDERATION OF BOARD'S 8/2/2016 ORDER

represents in this matter. Wayron is unable to provide additional proof of the Painters' intention to disclaim interest in the employees because Wayron has not had contact with the Union since the Painters' January 13, 2014 letter. To the extent the General Counsel needs further evidence that Wayron has settled its withdrawal liability with the Painters' pension, Wayron provides additional email exchanges between its counsel and the pension's agent, demonstrating that the parties have settled the pension issues. (Kristin Bremer Declaration II, Exhibit 1.)

It bears repeating, Wayron simply submitted its Motion for Reconsideration in an attempt to efficiently adjudicate this matter. For the foregoing reasons and those expressed in its Motion for Reconsideration, Wayron respectfully requests the Board grants its Motion for Reconsideration and amends the 8/2/2016 Order as stated in its opening brief.

DATED: October 3rd, 2016.

Respectfully submitted,

s/ Kristin L. Bremer Moore

Kristin L. Bremer, OSB No. 032744

Tonkon Torp LLP

1600 Pioneer Tower

888 SW Fifth Avenue

Portland, OR 97204

(503) 802-2154

kristin.bremer@tonkon.com

Attorney for Wayron, LLC

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **CHARGED**

**PARTY/RESPONDENT WAYRON, LLC'S REPLY TO GENERAL COUNSEL'S
OPPOSITION TO CHARGED PARTY/RESPONDENT'S MOTION FOR
RECONSIDERATION OF BOARD'S 8/2/2016 ORDER on:**

Jeff Brooke
Painters and Allied Trades Local 10
Union/Charging Party
11105 NE Sandy Blvd.
Portland, OR 97220-2579

Greg Heidal
Machinists District Lodge 160
Union/Charging Party
3516 S. 47th St., Ste. 105
Tacoma, WA 98409-4427

Lance Hickey
Boilermakers Local No. 104 Affiliated with
International Brotherhood of Boilermakers,
Iron Ship Builders, Blacksmiths, Forgers and
Helpers, AFL-CIO
Union/Charging Party
2800 1st Ave. Ste. 220
Seattle, WA 98121-1131

Ronald K. Hooks
Regional Director, NLRB Region 19
2948 Jackson Federal Building
915 2nd Ave.
Seattle, Washington 98174-1078

Sarah Pring Karpinen
Counsel for the Acting General Counsel
NLRB, Region 19
Patrick V. McNamara Federal Building
477 Michigan Ave., Rm 300
Detroit, MI 48226

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each person's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

by causing a copy thereof to be filed electronically through the *nrlb.gov* e-filing system on the date set for the below;

DATED: October 3rd, 2016.

s/ Kristin L. Bremer Moore
Kristin L. Bremer Moore, OSB No. 032744
Attorney for Wayron, LLC

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

WAYRON, LLC

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INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS OF AMERICA, LOCAL 104; THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 160, LOCAL LODGE 1350; AND THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 5

DECLARATION OF KRISTIN BREMER MOORE IN SUPPORT OF CHARGED PARTY/RESPONDENT WAYRON, LLC'S REPLY TO GENERAL COUNSEL'S OPPOSITION TO CHARGED PARTY/RESPONDENT'S MOTION FOR RECONSIDERATION OF BOARD'S 8/2/2016 ORDER

I, Kristin L. Bremer Moore, declare under penalty of perjury:

1. I am the attorney representing Wayron, LLC ("Wayron") in this action. I make this Declaration based on my personal knowledge.
2. Attached as **Exhibit 1** is a true copy of an email exchange between myself and Ryan Stephens, dated August 13, 2015, regarding Wayron and the Oregon and SW Washington Painters Pension Plan (the Pension) acknowledging the resolution of Wayron's withdrawal liability issues, and the Pension rejecting Wayron's request to memorialize the resolution in a written agreement.

I hereby declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on the 3rd of October, 2016, in Portland, Oregon.

s/ Kristin L. Bremer Moore

Kristin L. Bremer Moore

PAGE 1 – DECLARATION OF KRISTIN BREMER MOORE IN SUPPORT OF CHARGED PARTY/RESPONDENT WAYRON, LLC'S REPLY TO GENERAL COUNSEL'S OPPOSITION TO CHARGED PARTY/RESPONDENT'S MOTION FOR RECONSIDERATION OF BOARD'S 8/2/2016 ORDER

Kristin Bremer Moore

From: Ryan Stephens <ryan.s@wcearthart.com>
Sent: Thursday, August 13, 2015 1:58 PM
To: Kristin Bremer Moore
Subject: RE: Oregon and SW Washington Painters Pension Plan - Wayron LLC [IWOV-PDX.FID662473]

Kristin,
In reviewing the payment schedule for Wayron LLC, we do not show that the July 1, 2015 payment of \$6,853.81 was received.
Can you please check your records and see whether you (or the client) show that payment. Perhaps it was not received through USPS or other physical delivery to our office.

Please let me know as soon as possible.

Regards,
Ryan

Ryan Stephens | Senior Vice President | The William C. Earhart Co.Inc.,
PO Box 4148 | Portland, OR | 97208
(503)331-8200ph | (503)502-9381cell | (503)460-2975fx
ryan.s@wcearthart.com

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From: Ryan Stephens [mailto:ryan.s@wcearthart.com]
Sent: Wednesday, May 27, 2015 4:43 PM
To: 'Kristin Bremer Moore'
Subject: RE: Oregon and SW Washington Painters Pension Plan - Wayron LLC [IWOV-PDX.FID662473]

Kristin,
The Board of Trustees for the Oregon and SW Washington Painters Pension Plan and Trust met and discussed the request by Wayron LLC to enter into agreement summarized in your email below. It was determined that under the circumstances and the fact that Wayron LLC has complied with the Withdrawal Liability assessment and payment plan, the Trust does not have interest in entering into such an 'Agreement'.

Again, the feeling of the Trustees is that the obligations have been provided to this Employer and the Employer is meeting those obligations, so no additional 'agreement' is necessary.

Please let me know if you have any other questions.

Regards,
Ryan

Ryan Stephens | Senior Vice President | The William C. Earhart Co.Inc.,

PO Box 4148 | Portland, OR | 97208
(503)331-8200ph | (503)502-9381cell | (503)460-2975fx
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From: Kristin Bremer Moore [<mailto:kristin.bremer@tonkon.com>]
Sent: Wednesday, May 06, 2015 2:26 PM
To: 'Ryan Stephens'
Subject: RE: Oregon and SW Washington Painters Pension Plan - Wayron LLC [IWOV-PDX.FID662473]

Ryan,

Wayron requests that the parties enter into an agreement similar to the ones that it has with the other pension funds that covered its employees. I can provide you a copy, but the primary terms to be included are:

In consideration of the mutual promises and obligations set forth herein, the Parties hereby agree that Wayron will pay the sum of \$45,590.60, plus 7.50% annual interest, to resolve the Trust's claim for withdrawal liability. Payments shall be made pursuant to the schedule attached as Exhibit A to this Agreement, with the initial installment payment due on or before October 1, 2014. Thereafter, Wayron shall make eight (8) quarterly installment payments over a two (2) year period with the final quarterly installment payment due on April 1, 2016. Installment payments shall be made no later than October 1st, January 1st, April 1st and July 1st of each year. Wayron reserves the right at its sole discretion to pay the full amount of the remaining withdrawal liability amount in a single lump sum at any time during the payment plan, adjusted to the present value at that time, by requesting the Trustees to provide a lump sum present value payment estimate, which the Trustees shall provide to Wayron within 30 calendar days of the request.

Exhibit A is the Exhibit II to your letter of December 11, 2014. Please let me know if this is agreeable to the Painters Trust. I will provide you with a draft of the proposed agreement for your review and comment.

Thank you,

Kristin
Kristin L. Bremer Moore | Tonkon Torp LLP
1600 Pioneer Tower | 888 S.W. Fifth Avenue
Portland, Oregon 97204
503.802.2154 | FAX 503.972.3854
kristin.bremer@tonkon.com | www.tonkon.com

From: Ryan Stephens [<mailto:ryan.s@wcearthart.com>]
Sent: Thursday, December 11, 2014 2:40 PM
To: Kristin Bremer Moore
Subject: RE: Oregon and SW Washington Painters Pension Plan - Wayron LLC

Kristin,
I attempted to fax this to you but it did not seem to go through.

Here is a copy of letter regarding Wayron LLC that was mailed from our office today. There was a version mailed on 12/10 that was revised, so please disregard that letter dated 12/10/14 and replace with this one dated 12/11/14.

Regards,
Ryan

Ryan Stephens | Senior Vice President | The William C. Earhart Co.Inc.,
PO Box 4148 | Portland, OR | 97208
(503)331-8200ph | (503)502-9381cell | (503)460-2975fx
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DECLARATION OF KRISTIN BREMER MOORE IN SUPPORT OF CHARGED PARTY/RESPONDENT WAYRON, LLC'S REPLY TO GENERAL COUNSEL'S OPPOSITION TO CHARGED PARTY/RESPONDENT'S MOTION FOR RECONSIDERATION OF BOARD'S 8/2/2016 ORDER** on:

Jeff Brooke
Painters and Allied Trades Local 10
Union/Charging Party
11105 NE Sandy Blvd.
Portland, OR 97220-2579

Greg Heidal
Machinists District Lodge 160
Union/Charging Party
3516 S. 47th St., Ste. 105
Tacoma, WA 98409-4427

Lance Hickey
Boilermakers Local No. 104 Affiliated with
International Brotherhood of Boilermakers,
Iron Ship Builders, Blacksmiths, Forgers and
Helpers, AFL-CIO
Union/Charging Party
2800 1st Ave. Ste. 220
Seattle, WA 98121-1131

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Seattle, Washington 98174-1078

Sarah Pring Karpinen
Counsel for the Acting General Counsel
NLRB, Region 19
Patrick V. McNamara Federal Building
477 Michigan Ave., Rm 300
Detroit, MI 48226

by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each person's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;

by causing a copy thereof to be filed electronically through the *nlr.gov* e-filing system on the date set for the below;

DATED: October 3, 2016.

s/ Kristin L. Bremer Moore

Kristin L. Bremer Moore, OSB No. 032744
Attorney for Wayron, LLC

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PAGE 1 – CERTIFICATE OF SERVICE

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