

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

FRONTLINE SECURITY SERVICES, INC.

and

Cases 5-CA-162677
5-CA-162945

UNITED SECURITY & POLICE OFFICERS OF
AMERICA (USPOA)

**MOTION TO TRANSFER PROCEEDINGS TO THE
BOARD AND MOTION FOR DEFAULT JUDGMENT**

Pursuant to Section 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, the General Counsel respectfully moves that the National Labor Relations Board, herein referred to as the Board: (1) transfer these cases and continue proceedings before the Board; (2) deem the allegations set forth in the Consolidated Complaint issued on July 29, 2016, as admitted to be true without taking evidence supporting the allegations in the Consolidated Complaint; and (3) grant Default Judgment and issue a Decision and Order herein on the basis of the following:

1. On October 21, 2015, United Security & Police Officers of America (the Union) filed a charge in Case 5-CA-162677 alleging that Frontline Security Services, Inc. (Respondent) has been violating Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The charge in Case 5-CA-162677 was duly served on Respondent by mail on October 27, 2015. A copy of this charge and the Regional Director's transmittal letter (without enclosures) are attached as Exhibits 1 and 2, respectively.

2. On October 26, 2015, the Union filed a charge in Case 5-CA-162945 alleging that the Respondent has been violating Section 8(a)(1) and (5) of the Act. The charge in Case 5-CA-

162945 was duly served on Respondent by mail on October 30, 2015. A copy of this charge and the Regional Director's transmittal letter (without enclosures) are attached as Exhibits 3 and 4, respectively.

3. On February 2, 2016, Respondent entered into a bilateral informal Settlement Agreement with the Union, which was subsequently approved by the Regional Director for Region 5 on February 24, 2016. A Notice to Employees (Notice) was made part of the Settlement Agreement. A conformed copy of the Settlement Agreement and the Notice are attached as Exhibits 5 and 6, respectively.

4. The Settlement Agreement and Notice required, inter alia, that Respondent:
- a. Post the Notice in prominent places, including all places where notices to employees are customarily posted, at its facility located at 409 Third Street SW, Washington, DC, (the Worksite) and keep the Notice posted for 60 consecutive days from the date of initial posting;
 - b. Distribute the Notice by e-mail to all employees who work at the Worksite, and forward a copy of that e-mail with all of the recipients' e-mail addresses to the Region's Compliance Officer; and
 - c. Make whole the named employees and the Union as identified in the Backpay paragraph of the Settlement Agreement by paying to them the amounts identified therein, including making appropriate withholdings for each named employee.

5. The Settlement Agreement contains a provision entitled, “COMPLIANCE WITH NOTICE” providing that:

[Respondent] will comply with all the terms and provisions of said Notice.

6. The Settlement Agreement also contains a provision entitled “PERFORMANCE,” requiring immediate compliance with the Settlement Agreement’s terms, and the following clause concerning the event of Respondent’s non-compliance with the agreed-upon terms:

Performance by [Respondent] with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the [the Union] does not enter into this Agreement, performance shall commence immediately upon receipt by [Respondent] of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

[Respondent] agrees that in case of non-compliance with any of the terms of this Settlement Agreement by [Respondent], and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by [Respondent], the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. [Respondent] understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that [Respondent] may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to [Respondent] on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board

Order ex parte, after service or attempted service upon [Respondent] at the last address provided to the General Counsel.

7. By letter dated February 26, 2016, the Compliance Officer for Region 5 sent Respondent's counsel a copy of the approved Settlement Agreement and a cover letter soliciting compliance with the terms of the Settlement Agreement. A copy of this letter (without enclosures) and proof of receipt are attached as Exhibits 7 and 8, respectively.

8. By e-mail dated March 15, 2016, the Compliance Assistant for Region 5 inquired into the status of Respondent's compliance with the terms of the Settlement Agreement. That same day, Respondent's counsel replied to that inquiry stating that she was no longer representing Respondent, but was forwarding the Region's inquiry to Respondent's chief executive officer Devonne Edwards. A copy of that e-mail correspondence is attached as Exhibit 9.

9. Having received no further response to the March 15, 2016 inquiry, on March 28, 2016, the Compliance Officer for Region 5 sent to Respondent another copy of the approved Settlement Agreement and cover letter, again soliciting Respondent's compliance with the terms of the Settlement Agreement. A copy of that letter (without enclosures) and proof of receipt are attached as Exhibits 10 and 11, respectively.

10. By letter dated April 7, 2016, and pursuant to the terms of the Settlement Agreement, the Regional Director for Region 5 notified Respondent that it failed to comply with the terms of the Settlement Agreement, and that Respondent must comply and provide evidence of its compliance within 14 days (April 21, 2016) or the Regional Director would institute default proceedings against Respondent. This letter was transmitted to Respondent by regular

and electronic mail. A copy of this letter (without enclosures) is attached as Exhibit 12, and a copy of the e-mail transmittal of this letter is attached as Exhibit 13.

11. By e-mail dated April 13, 2016, 8 days prior to the Regional Director's April 21, 2016 deadline, the Acting Compliance Officer for Region 5 sent Respondent another copy of the approved Settlement Agreement and cover letter soliciting compliance with the terms of the Settlement Agreement. This e-mail also informed Respondent that confirmation of all posting requirements must be submitted to the Region by April 15, 2016, and all backpay must be submitted by May 2, 2016. A copy of this e-mail (without attachments) is included as Exhibit 14.

12. By e-mail dated April 27, 2016, the Acting Compliance Officer for Region 5 sent Respondent the Regional Director's April 7, 2016 letter and a Certification of Posting form. This e-mail explained that the Respondent's deadline for compliance was April 21, 2016, and the Region had not received any evidence of compliance with the terms of the Settlement Agreement. A copy of this e-mail (without attachments) is included as Exhibit 15.

13. By e-mail dated May 3, 2016, the Acting Compliance Officer for Region 5 again notified Respondent that the Region had not received any evidence of compliance. A copy of this e-mail is attached as Exhibit 16.

14. On May 3, 2016, the Region received from Respondent checks, made payable to each of the named employees in the backpay paragraph of the Settlement Agreement, for the combined amounts of backpay, health and welfare benefits, and pension payments required by the Settlement Agreement; however, Respondent failed to make appropriate withholding for each employee and failed to submit interest checks for each employee. Respondent did not provide checks for any payments owed to the Union as required by the Settlement Agreement.

15. On May 5, 2016, the Region received from Respondent, as required by the Settlement Agreement, checks for the interest payments owed to employees, payable to each of the named employees in the backpay paragraph of the Settlement Agreement. Respondent did not provide checks for any payments owed to the Union as required by the Settlement Agreement.

16. By letter dated May 10, 2016, the Acting Compliance Officer for Region 5 notified Respondent that although it submitted backpay checks to the Region, it continued to be in non-compliance with to the terms of the Settlement Agreement by failing to:

- a. Make appropriate withholdings from each named employee's backpay check;
- b. Make whole the Union by payment in the amount identified in the Backpay paragraph of the Settlement Agreement;
- c. Post the Notice in prominent places, including all places where notices to employees are customarily posted, at the Worksite and keep the Notice posted for 60 consecutive days from the date of initial posting; and
- d. Distribute the Notice by e-mail to all employees who work at the Worksite, and forward a copy of that e-mail with all of the recipients' e-mail addresses to the Region's Compliance Officer.

Enclosed with this letter were the deficient checks for the combined backpay, health and welfare, and pension payments. Respondent was further notified that the interest checks would be held by the Region and would be distributed to the named employees after Respondent submitted the

corrected backpay checks.¹ Respondent was further advised that interest would continue to accrue until Respondent complies with the Settlement Agreement, and that the amount of interest owed to each employee may change. This letter was transmitted to Respondent by regular and electronic mail. A copy of this letter (without enclosures) is attached as Exhibit 17, and a copy of the e-mail transmittal of this letter is attached as Exhibit 18.

17. Respondent has not responded to the Acting Compliance Officer's May 10, 2016 letter, and the Region is not aware of any further action taken by Respondent to comply with the Settlement Agreement.

18. On July 29, 2016, the Regional Director for Region 5 issued a Consolidated Complaint in Cases 5-CA-162677 and 5-CA-162945 alleging that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, and a copy was served on Respondent the same day. A copy of the Consolidated Complaint (without appendix) and affidavit of service are attached as Exhibits 19 and 20, respectively.

19. As described in the Regional Director's April 7, 2016 letter, since entering into the Settlement Agreement, Respondent has failed to comply with the terms of the Settlement Agreement.

20. As described above in Paragraph 6, the Settlement Agreement provides that in the event of non-compliance, Respondent will not contest the validity of the allegations in the Consolidated Complaint. Under the terms of the Settlement Agreement, and by virtue of the Respondent's non-compliance with the terms of the Settlement Agreement: (1) Respondent has waived its right to file an Answer to the Consolidated Complaint in this matter; (2) the

¹ Respondent never submitted corrected backpay checks. Accordingly, on September 27, 2016, the Region returned the interest checks to Respondent. On October 7, 2016, the interest checks were returned to the Region as undeliverable.

allegations in the Consolidated Complaint are deemed admitted; and (3) no hearing is necessary regarding the allegations in the Consolidated Complaint. The Settlement Agreement provides that the only issue Respondent may raise in response to an Order to Show Cause that the Board may issue, is whether Respondent defaulted on the terms of the Settlement Agreement. The Board has explicitly approved of such a provision and found it enforceable. See e.g., *Midwestern Video Personnel*, 363 NLRB No. 120 (2016); *Interiors for Today*, 338 NLRB 784 (2003); *Ernest Lee Tile Contractors*, 330 NLRB No. 61 (2000) (not published in bound volumes) (language enforceable despite partial compliance with settlement agreement). Respondent has had ample time and opportunity to fully comply with the terms of the Settlement Agreement, yet it has failed to do so.

WHEREFORE, the General Counsel respectfully moves that Board:

1. Transfer these cases to the Board;
2. Find that Respondent has waived its right to file an Answer to the Consolidated Complaint under the terms of the Settlement Agreement, that the allegations of the Consolidated Complaint are deemed to be true; and that no hearing is necessary;
3. Find that Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged in the Consolidated Complaint; and
4. Issue a Decision containing findings of fact and conclusions of law based on, and in accordance with, the allegations of the Consolidated Complaint, remedying such unfair labor practices, including requiring Respondent to comply with the terms of the

Settlement Agreement, and granting such other relief as may be just and proper to remedy the violations described in the Consolidated Complaint.²

Dated at Baltimore, Maryland, this 14th day of October 2016.

Respectfully submitted,

/s/ Joseph McGlew-Castaneda

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² The General Counsel respectfully requests that the Board adopt the proposed Order and Notice Employees attached as Exhibits 21 and 22, respectively.

STATEMENT OF SERVICE

I hereby certify that on October 14, 2016, copies of the General Counsel's Motion to Transfer Proceedings to the Board and Motion for Default Judgment were served by e-mail on the following parties:

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