

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

SPECTRUM JUVENILE JUSTICE SERVICES

and

Case 07-CA-180451

**INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)**

**RESPONDENT'S RESPONSE BRIEF TO
COUNSEL FOR THE GENERAL COUNSEL'S MOTION
TO TRANSFER CASE TO THE BOARD AND FOR
SUMMARY JUDGMENT ON THE PLEADINGS**

Now comes SHERYL A. LAUGHREN, attorney for SPECTRUM JUVENILE JUSTICE SERVICES, Respondent herein, and pursuant to the Board's Order Transferring Proceeding to the Board and Notice to Show Cause, provides the following Brief.

The Board has issued a Complaint alleging that Respondent, in violation of Section 8(a)(5) of the NLRA, has refused to bargain with the International Union, Security, Police and Fire Professionals of America (hereinafter "Union") following Certification of the Union by the Board. The factual allegations set forth in the General Counsel's Motion for Summary Judgment on the Pleading are true and are admitted as being true by Respondent. However, the factual allegations which were set forth in Paragraph 11 of the Motion is but a short synopsis of the factual allegations set forth in Respondent's Objection to the Conduct of the Election filed on March 10, 2016. A copy of Respondent's Objection is attached at Tab A.

This is a "technical 8(a)(5)" case, where an employer who is dissatisfied with an adverse representation decision, as in this matter, can obtain judicial review of that decision only by refusing to bargain when the union is certified. The defense to that refusal to bargain then is that

the certification was improperly issued. Under these circumstances, the court will review the representation issue in a Court of Appeals proceeding to enforce or set aside the Board's order.

Respectfully submitted this 17th day of October, 2016.

By: /s/ Sheryl A. Laughren
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EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SPECTRUM JUVENILE JUSTICE SERVICES

Employer

Case No. 07-RC-169521

and

INTERNATIONAL UNION, SECURITY, POLICE,
AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Union

EMPLOYER'S OBJECTION TO THE
CONDUCT OF THE ELECTION

Reasons for Objections

Employer timely filed the Voter List in the proper form to the Board with service to the Union. The Voter List contained the names of 158 eligible voters, in alphabetical order, employed at the Employer's Lincoln Center and Calumet facilities.

Prior to the election, the Board agents overseeing the election decided to split the Voter List into two parts – one listing just the Calumet eligible voters and the other listing just the Lincoln Center eligible voters. The Board agents conducting the election at the Calumet facility gave this revised Voter List of eligible Calumet voters to the Employer and Union designated observers at the Calumet facility. Likewise, they gave their revised Voter List of eligible Lincoln Center voters to the Employer and Union designated observers at the Lincoln Center facility.

However, the Board's revised "Voter Lists" were inaccurate and incomplete. Those combined Lists left off the names of at least 35 eligible voters who attempted to vote in the election. Prior to the vote count, these 35 challenged ballot employees were deemed eligible to vote by checking their names against the Voter List submitted by the Employer to the Board and Union.

Those 35 eligible employees were forced to vote under challenge because they were not on the respective revised List. It is entirely probable that some or many of those employees, some who were long-term employees, believed that the Employer purposely left them off the List, and as a result, voted for the Union based on this apparent snub by the Employer. As to the vote count, 74 votes were cast for the Union and 56 votes were cast against the Union – an 18 vote difference. If just nine of those 35 voters had changed their votes, the Union would have lost the election.

Although the Board agents preparation of these revised Voter Lists may have been inadvertently careless, their conduct might be construed as, or tended to imply, partiality by the Board to the Union.

Offer of Proof

Employer's offer of proof consists of the testimony of the Board agents who supervised the revision of the Voter Lists and conducted the election at Calumet and Lincoln Center, as well as the Employer and Union observers and representatives present for the vote count. It is expected that the testimony of these witnesses will wholly corroborate the facts stated above. In addition, the documents already in the possession of the Board, i.e. Employer's Voter List submitted to the Board and Union, the Board revised Voter Lists used at the Calumet and Lincoln Center facilities, the Board "Tally of Ballots" Form NLRB-760 Used in the election, will document the truth of the facts stated above.

For the Employer



Sheryl A. Laughren
Attorney of the Employer

Dated: March 10, 2016

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SPECTRUM JUVENILE JUSTICE SERVICES,

Employer,

Case No. 7-RC-169521

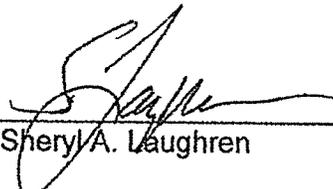
and

INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA,

Petitioner.

PROOF OF SERVICE

Sheryl A. Laughren, being first duly sworn, certifies that on March 10, 2016, she served Petitioner and the Regional Director of the National Labor Relations Board with Employer's Objection to the Conduct to the Election to the National Labor Relations Board by using the e-filing system and the Internal Union, Security, Police and Fire Professionals of America by email at Dwayne@spfpa.org, mike@unionlaw.net, and organize@spfpa.org



Sheryl A. Laughren

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

SPECTRUM JUVENILE JUSTICE SERVICES

Respondent

and

CASE 07-CA-180451

INTERNATIONAL UNION, SECURITY POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)

Charging Union

/

PROOF OF SERVICE

Sheryl A. Laughren, being first duly sworn, certifies that on October 17, 2016, she served Petitioner and the Regional Director of the National Labor Relations Board with Respondent's Response Brief to Counsel for the General Counsel's Motion to Transfer Case to The Board and For Summary Judgment on the Pleadings by using the e-filing system and the International Union, Security, Police and Fire Professionals of America by email at dwayne@spfpa.org, mike@unionlaw.net, and organize@spfpa.org

/s/ Sheryl A. Laughren _____