

**IN THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

PERSONNEL STAFFING GROUP, LLC d/b/a
MOST VALUABLE PERSONNEL, AND MVP
WORKFORCE, LLC, A SINGLE EMPLOYER,

and

Case 13-CA-149591

CHICAGO WORKERS' COLLABORATIVE,

and

Case 13-CA-149592

JOSE SOLORZANO, an Individual,

and

Case 13-CA-149593

ISAURA MARTINEZ, an Individual,

and

Case 13-CA-149594

MARCELLA GALLEGOS, an Individual

and

Case 13-CA-149596

DORA IARA, an Individual,

and

Case 13-CA-155513

ROSA CEJA, an Individual

and

Case 13-CA-162002

GERALDINE BENSON, an Individual,

and

Case 13-CA-162270

WESTSIDE HEALTH AUTHORITY

**MEMORANDUM OF PERSONNEL STAFFING GROUP, LLC AND
MVP WORKFORCE, LLC IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

Elliot Richardson
Britney Zilz
Alison M. Field
Korey Richardson LLC
20 S. Clark Street, Suite 500
Chicago, Illinois 606013
Tel.: 312-372-7075
Fax: 312-372-7075
Emails: erichardson@koreyrichardsonlaw.com
bzilz@koreyrichardsonlaw.com
afield@koreyrichardsonlaw.com

Attorneys for Respondent

INTRODUCTION

The matters brought before the Board at the present are not subject to the jurisdiction of the National Labor Relations Board. These cases are not cases between employers and employees regarding any protected activity. These cases are not cases involving disputes between employers and labor organizations or unions. And these cases are not labor disputes. Instead, these cases arise out of disputes between private, unrelated entities. These claims, taken to their conclusion, severely disrupt decades of common law defamation claims and employers' First Amendment rights. The Chicago Workers' Collaborative ("CWC") and Westside Health Authority ("WHA") are not labor organizations, and are entitled to no protection under the NLRA. Furthermore, several of the Charges brought by the CWC and individuals are barred by the statute of limitations under Section 10(b). As a result, summary judgment must be entered in favor of Respondents Personnel Staffing Group, LLC ("MVP") and MVP Workforce, LLC's ("Workforce").

STATEMENT OF FACTS

I. THE CWC-RELATED CHARGES AND STATE COURT LAWSUIT

Respondents are temporary labor service agencies that provide temporary labor personnel services to third-party clients. In or about November 2013, the CWC began a campaign against Respondents and other area staffing agencies, which included travelling to Respondents' offices and blocking the ingress and egress to the premises. (*See* Position Statements to 13-CA-149591, 13-CA-149592, 13-CA-149593, 13-CA-149594, and 13-CA-149596, attached hereto as Group Exhibit 1). The CWC's agents were not employees of Respondents. (*Id.*) This activity continued for almost a year.

On September 24, 2014, MVP held a job fair on its premises. (*Id.*; *see also* Verified Complaint in Case No. 2014-CH-16104, attached hereto as Exhibit 2). During this job fair, four

unknown individuals who were not employees of Respondents, but instead were agents of the CWC, blocked access to the job fair. (*See* Ex. 2). While blocking access to the job fair and harassing applicants, the CWC's agents told individuals that MVP discriminated against employees (was engaged in "slave labor"), refused to pay its employees, and would not send injured employees to medical facilities. (*Id.*). These statements were malicious and false. (*Id.*). As a result of the CWC's repeated trespasses into Respondents' private premises, interference with business operations, and defamatory statements, Respondents filed suit against the CWC. That case was pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers' Collaborative*, Case No. 2014 CH 16104 (the "CWC State Court Litigation") on October 6, 2014. (*Id.*).

The CWC and individuals presumably associated with the CWC filed Charges against MVP and Workforce on April 6, 2015 (the "CWC-Related Charges"). (*See* Charges Against Employer in Case Nos. 13-CA-149591, 13-CA-149592, 13-CA-149593, 13-CA-149594, and 13-CA-149596, attached hereto as Group Exhibit 3). These Charges asserted that: (a) MVP and/or Workforce refused to hire individuals on September 24, 2014 for engaging in protected concerted activity; and (b) MVP and Workforce filed a lawsuit on October 6, 2014 that the Charging Parties contended was preempted and/or retaliatory. (*See* Ex. 3). The Charging Parties never served the Charges on MVP or Workforce. (*See* Ex. 1). Instead, the Charges were sent via U.S. mail by the Board. (*See* Ex. 3).

II. THE WHA-RELATED CHARGES AND STATE COURT LAWSUIT

On March 24, 2015, WHA sent a correspondence to one of MVP's clients. (A copy of the March 24, 2015 correspondence is attached hereto as Exhibit 4). Within the correspondence, WHA stated that MVP had a "segregationist employment model that shuts out African-Americans

and targets Mexican immigrant workers.” (Ex. 4). The correspondence went on to: (a) accuse MVP of being “abusive” and “discriminatory”; (b) disparage MVP to one of its clients; (c) claim that MVP only pays its employees minimum wage and locks its employees into “perma-temp” status, thereby failing to providing employees with “decent” jobs; and (d) allege that MVP engages in “segregation/discrimination and predatory jobs.” (Ex. 4). These statements are false and malicious, and were sent, not to MVP but rather to one of MVP’s clients in an attempt to harm MVP’s business relationship with that client. (*See* Ex. 4; *see also* Position Statements in Case Nos. 13-CA-162002 and 13-CA-162270, attached hereto as Group Exhibit 5).

As a result of the defamatory and malicious statements contained in the correspondence, on April 16, 2015, MVP filed a Complaint for defamation against WHA. (A copy of the WHA Complaint is attached hereto as Exhibit 6). That case was pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Westside Health Authority*, Case No. 2015 L 003976 (the “WHA State Court Litigation”). (*See* Ex. 6). On October 16, 2015, WHA and Geraldine Benson filed Charges against MVP, alleging that the WHA State Court Litigation was preempted and/or retaliatory (the “WHA-Related Charges”), and served their Charges the same day on MVP. (*See* Charges against Employer in Case Nos. 13-CA-162002 and 13-CA-162270, attached hereto as Group Exhibit 7).

LEGAL STANDARD

Rule 102.24(b) of the NLRB Rules sets forth that a party may move for summary judgment prior to a hearing. 29 C.F.R. 102.24(b). The Board must grant motions for summary judgment where there is “‘no genuine issue as to any material fact’ and ‘the moving party is entitled to judgment as a matter of law.’” *L’Hoist North America of Tennessee, Inc. and United Mine Workers of America, District 17*, 362 NLRB No. 110, *1 (NLRB 2015).

ARGUMENT

The claims in the Consolidated Complaint fail for two simple reasons: (a) the CWC-Related Charges are barred by the statute of limitations; and (b) the CWC-Related Charges and WHA-Related Charges arise out of lawsuits filed against two third-party organizations that are not entitled to protection under the NLRA. The claims in Case Nos. 13-CA-149591, 13-CA-149592, 13-CA-149593, 13-CA-149594, and 13-CA-149596 are undeniably barred by the statute of limitations set forth in Section 10(b) of the NLRA, as they were never served on MVP or Workforce during the six-month statutory period. Further, the claims in the CWC-Related Charges and WHA-Related Charges arise out of claims for defamation filed against two private, third-party organizations, which are not protected under the NLRA. Accordingly, summary judgment should be entered in Respondents' favor on these claims.

I. THE CWC-RELATED CHARGES ARE BARRED BY THE STATUTE OF LIMITATIONS IN SECTION 10(b) OF THE NLRA

The Charging Parties' claims in the CWC-Related Charges arise out of two actions: (a) MVP and/or Workforce purportedly failing to hire individuals on September 24, 2014; and (b) MVP and Workforce filing a defamation lawsuit against the CWC on October 6, 2014. (*See Ex. 3*). The Charging Parties filed their Charges on April 6, 2014, and never served MVP or Workforce with a copy of the Charges; accordingly, their claims are barred by Section 10(b).

Under Section 10(b) of the NLRA, "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made." 29 U.S.C. § 160(b). Further, under 29 C.F.R. § 102.14, it is the responsibility of the *charging party* to ensure proper and timely service of any Charge Against Employer. 29 C.F.R. § 102.14(a); *see also Kelley v. N.L.R.B.*, 79 F.3d 1238, 1244-47 (1st Cir. 1996). The Charging Parties never served Respondents

with the Charges. Indeed, Respondents only received notice of the Charges pursuant to 29 C.F.R. § 102.14(b), when the Regional Director provided a copy of the Charge to Respondent as a courtesy. Complainant filed its Charge Against Employer on April 6, 2015; however, Respondent did not receive notice of the Charge until April 10, 2015. (*See* Ex. 1).

Given that the acts complained within the CWC-Related Charges occurred on September 24, 2014 and October 6, 2014, it is clear that these claims are barred by the six-month limitations period identified in Section 10(b). It was the Charging Parties' responsibility to ensure that the Charges were served on Respondents in a timely fashion. Complainant failed to do so, and as such, Complainant's Charge must be dismissed. *See* 29 C.F.R. § 102.14; *Kelley*, 79 F.3d at 1247 (affirming dismissal of charge for untimely service under Section 10(b) even though charge was served one day after the expiration of the six-month limitation period). There is no genuine issue of material fact as to: (a) when the acts complained of in the Charges occurred (September 24, 2014 and October 6, 2014); (b) when the Charging Parties filed their Charges (April 6, 2015); (c) that Respondents were never served with the Charges by the Charging Parties; or (d) that Respondents did not receive notice of the CWC-Related Charges until after the expiration of the statute of limitations period. Accordingly, summary judgment must be entered in favor of Respondents in Case Nos. 13-CA-149591, 13-CA-149592, 13-CA-149593, 13-CA-149594, and 13-CA-149596.

II. THE CWC-RELATED AND WHA-RELATED CHARGES FAIL BECAUSE NEITHER THE CWC NOR WHA ARE PROTECTED UNDER THE NLRA

The CWC-Related Charges fails for one simple reason: in the CWC State Court Litigation, Respondents filed a defamation lawsuit against a private entity, and not any entity protected under the NLRA. Similarly, the WHA-Related Charges fail because MVP filed a defamation lawsuit against a private entity, and not any entity protected under the NLRA. The NLRA states that

employers may not engage in unfair labor practices, which include (1) interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the NLRA; and (2) discriminating against employees in regard to the hire, tenure of employment, or the terms and conditions of employment to encourage or discourage membership in a labor organization. 29 U.S.C. § 158(a)(1), (3). The NLRA defines a labor organization as “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of *dealing with employers* concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” 29 U.S.C. § 152(5) (emphasis added). An organization is only a labor organization under Section 2(5) if: “(1) employees participate, (2) the organization exists, at least in part, for the purpose of ‘dealing with’ employers, and (3) these dealings concern ‘conditions of work’ or concern other statutory subjects, such as grievances, labor disputes, wages, rates of pay, or hours of employment.” *Electromation, Inc.*, 309 NLRB 163, at 6 (1992), *enforced* 35 F.3d 1148 (7th Cir. 1994).

Although the phrase “dealing with employers” is not to be read as synonymous with the phrase “bargaining with,” generally speaking, the “‘dealing with’ phraseology denotes a ‘bilateral mechanism’” through which the labor organization and employer interact. *Waugh Chapel South, LLC v. United Food and Commercial Workers Union Local 27*, 728 F.3d 354, 361 (4th Cir. 2013); *Spence v. Southeastern Alaska Pilots’ Ass’n*, 789 F. Supp. 1007, 1011 (D. Alaska 1990); *NLRB v. Cabot Carbon Co.*, 360 U.S. 203, 211 (1959). Under this analysis, “‘dealing’ occurs only if there is a ‘pattern or practice’ over time of employee proposals concerning working conditions, coupled with management consideration thereof.” *Waugh Chapel South, LLC*, 728 F. Supp. at 361. Isolated instances of an organization presenting concerns regarding working conditions do not constitute “dealing.” *Id.*

The CWC is not a labor organization “dealing with” employers. The CWC identifies itself as a “non-profit organization . . . that promotes full employment and equality for the lowest wage-earners, primarily temp staffing workers, in the Chicago region through leadership and skills training, critical assistance and services, advocacy and collaborative action.” (See Chicago Workers’ Collaborative, “About Us,” Oct. 22, 2013, available at <http://www.chicagoworkerscollaborative.org/?q=content/%3Fq%3Dabout-us>, attached hereto as Exhibit 8). The CWC identifies its “initiatives” as: (1) collaborating with state agencies to improve enforcement of labor laws; (2) educating temporary laborers regarding their employment rights; (3) working with law enforcement agencies in arresting perpetrators and helping victims of human trafficking; and (4) bringing together minority workers to end the criminalization of those minorities. (Ex. 8). In other words, the CWC provides training and advises temporary laborers on their rights and directs them where to go to enforce their rights, but does not “deal with” employers. Furthermore, the CWC is not identified as a “labor organization” by the IRS; instead, it is a charitable organization under Section 501(c)(3).

Nor is WHA a “labor organization” under Section 2(5) that “deals with” employers. Initially, WHA identifies itself as a “501(c)3 organization serving the Austin neighborhood and the greater Westside Chicago since 1988. . . . WHA’s mission is to use the capacity of local residents to improve the health and well-being of the community.” (See “About Us,” Westside Health Authority, available at <http://healthauthority.org/about-wha/>, attached hereto as Exhibit 9). WHA identifies its “initiatives” as: (1) engaging in community organizing to bring community leaders together; (b) helping men and women re-enter the community after incarceration; (c) providing job training; (d) health and wellness promotions; (e) real estate development; and (f) youth development. In other words, Complainant purports to provide community assistance to

those on Chicago's west side. WHA does not "deal with" employers. Nor does WHA identify itself as "dealing with" employers the Charges filed against MVP, or even dealing with MVP specifically. (See Ex. 9). Furthermore, WHA is not identified as a "labor organization" by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC and WHA organizations consist of "social advocacy, legal services, and job-support services," they are not "labor organizations" under Section 2(5). See *Restaurant Opportunities Center of New York*, 34 NLRB AMR 28, 2006 WL 6828200 (2006); *Restaurant Opportunities Center of New York*, NLRB Div. of Advice, No. 2-CP-1067, 2006 WL 5054727 (Nov. 30, 2006). In *Restaurant Opportunities Center of New York*, the NLRB determined that ROCNY did not function as a labor organization, as most of its activities dealt with social advocacy, legal services, and job-support services, and its instances of attempts to enforce employment laws were isolated instances. 34 NLRB AMR 28. As the NLRB determined, ROCNY attempted to negotiate settlements and resolve isolated disputes with the employer did not constitute a "pattern or practice" of "dealing with" the employer that extended "over time." See *id.* Accordingly, the NLRB found that ROCNY was not a labor organization under Section 2(5) of the NLRA.

The NLRB's determination in *Restaurant Opportunities Center of New York* is particularly applicable here, as ROCNY and Complainant serve similar functions within their communities. These organizations hold themselves out as social advocates uniting to fight a perceived injustice within an industry, offer rights training, and partake in legal advocacy. (Compare Ex. 8 and 9 with "Restaurant Opportunities Center of New York," www.rocny.org). However, none of these entities have a pattern nor practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). The CWC and WHA, much like ROCNY, focus on

advocacy and education of workers' rights, according to their own websites. (*See* Ex. 8; Ex. 9). Simply put, these are not labor organizations.

Since the CWC and WHA are not labor organizations, their wrongful acts against Respondents are not subject to the NLRA, and Respondents' state court claims for redress of those wrongful acts cannot be preempted by the NLRA or retaliatory under the NLRA. The NLRA protects labor organizations and employees engaging in, and supporting, protected concerted activities by labor organizations and employees. The CWC and WHA are neither. As a result, there can be no doubt that the dispute between the CWC and Respondents and WHA and MVP are nothing more than private disputes between private entities – not labor disputes, nor any dispute subject to the NLRA. Accordingly, summary judgment should be entered in favor of Respondents in Case Nos. 13-CA-149591, 13-CA-149592, 13-CA-149593, 13-CA-149594, 13-CA-149596, 13-CA-162002, and 13-CA-162270.

CONCLUSION

WHEREFORE, Respondents, PERSONNEL STAFFING GROUP, LLC d/b/a MOST VALUABLE PERSONNEL and MVP WORKFORCE, LLC, respectfully request that the National Labor Relations Board grant this Motion and enter summary judgment in favor of Respondents in Case Nos. 13-CA-149591, 13-CA-149592, 13-CA-149593, 13-CA-149594, 13-CA-149596, 13-CA-162002, and 13-CA-162270, and for such further relief as the Board deems equitable and just.

Respectfully submitted,

PERSONNEL STAFFING GROUP, LLC
and MVP WORKFORCE, LLC


One of their attorneys

Elliot Richardson
Britney Zilz
Alison M. Field
KOREY RICHARDSON LLC
20 S. Clark Street, Suite 500
Chicago, IL 60610
P: (312) 372-7075