

EXHIBIT 1



KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Chicago Workers' Collaborative v. Personnel Staffing Group, LLC
Case No. 13-CA-149591**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent Personnel Staffing Group, LLC d/b/a Most Valuable Personnel ("PSG" and/or "Respondent") in this matter. Please direct all correspondence, questionnaires, and information requests to the attention of the undersigned.

The Chicago Workers' Collaborative ("Complainant" and/or the "CWC") has asserted meritless claims against Respondent. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity and also filed a lawsuit against "persons and an association of persons who engaged in and supported concerted activity." (*See* Charge Against Employer). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*) Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent's working conditions and a job fair occurring on September 24, 2014. (*Id.*) Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act ("NLRA").

Initially, the litigation referenced by Complainant was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because the CWC, through its employees and agents, trespassed on Respondent's private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order prohibiting such trespasses, and that injunctive relief remains in effect today. Complainant additionally filed a motion to dismiss Respondent's Complaint, which has been denied.

Further, Complainant is not a labor organization under the NLRA and is not entitled to any protections as such. Finally, Complainant's Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against Complainant because it was engaging in wrongful conduct, and obtained injunctive relief that remains intact. In response, Complainant's attorney has now

brought a slew of NLRB claims against Respondent on behalf of Complainant and individuals apparently associated with Complainant. Complainant's Charge is meritless, and Respondent requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, Complainant began an extensive campaign against Respondent and other area temporary labor service agencies. During that time, Complainant traveled to Respondent's Cicero branch office location and on several occasions, blocked ingress and egress to the premises. Complainant's employees and supporters, who were not employed by Respondent, also illegally entered Respondent's business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, Complainant would distribute flyers, while trespassing upon Respondent's property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the Complainant, its employees and associates refused to cease trespassing upon Respondent's premises and illegally disrupting its business operations.

On September 24, 2014, Respondent held a job fair for individuals in the Chicagoland community to fill out applications and to ask questions regarding Respondent's business. This job fair occurred on Respondent's private premises. During the job fair, four unknown individuals employed by Complainant stopped individuals from attending the community job fair by blocking access to the job fair and telling potential applicants that Respondent stole employees' wages, discriminated against employees, and refused to send injured employees to approved medical facilities. If an individual did fill out an application at the job fair, Complainant's employees would again stop the applicants in an effort to persuade them from working for Respondent.

Complainant then sent individuals into Respondent's business to apply for work, but when called for an assignment, refused to work for Respondent, stating they were "not interested." Complainant's employees and/or agents also came inside Respondent's office, harassed its employees and interfered with its prospective economic relationships. As a result of Complainant's repeated trespasses onto Respondent's private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against Complainant and two individuals employed by Complainant, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers' Collaborative*, Case No. 2014 CH 16104 (the "State Court Litigation").

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that Complainant be enjoined from trespassing into Respondent's private business and blocking ingress and egress to and from Respondent's office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent's Motion for a Temporary Restraining Order. The Temporary Restraining Order provided that Complainant was

“temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent’s Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, Complainant filed a Motion to Dismiss Respondent’s Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied Complainant’s Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, Complainant consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

II. Complainant Is Not A “Labor Organization” Nor An “Employee” of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees’ rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that Complainant is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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

¹ Respondent’s Cicero office is located at 5637 West Roosevelt Road in Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of MVP Workforce, LLC, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

mechanism” through which the labor organization and employer interact. *Waugh Chapel South, LLC v. United Food and Commercial Workers Union Local 27*, 728 F.3 354, 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.*

Complainant is not a labor organization “dealing with” employers. Initially, Complainant 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> (last accessed April 20, 2015), and attached hereto as Exhibit A). Complainant 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. A). In other words, Complainant 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. Nor does Complainant identify itself as “dealing with” employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that it merely “supported concerted activity.” (See Charge Against Employer). Furthermore, Complainant is not identified as a “labor organization” by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As Complainant’s organization consists of “social advocacy, legal services, and job-support services,” it is not a “labor organization” 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. Both 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. A with “Restaurant Opportunities Center of New York,” www.rocny.org (last access April 20, 2015)).

However, neither entity has a pattern nor practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). Complainant, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See* Ex. A). Although Complainant has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. It clear from Complainant's Charge against Employer, as well as its description of its organization, that it is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant's claims arise out of Section 8(a)(1) and (3) based on its supposed status as a labor organization, those claims lack merit and must be dismissed.

III. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that it, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom it alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). However, to the extent that Complainant's claims arise out of the actions on September 24, 2014 or the Temporary Restraining Order entered against Complainant, those claims are barred by the statute of limitations set forth in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (the supposed underlying concerted activity) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

IV. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its suit in the Circuit Court of Cook County, Illinois against Complainant and two individuals who are not employees of Respondent. None of Respondent's employees are named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent's employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by Complainant. On October 7, 2014, Respondent filed its Complaint and an Emergency Motion for a Temporary Restraining Order. Respondent's Motion for a Temporary Restraining Order requested only that Complainant be prohibited from blocking ingress and egress to Respondent's office and from entering the private premises of Respondent's office. After both notice and a hearing (during which time Complainant's counsel was present), the Honorable Judge Larsen entered a Temporary Restraining Order.

Complainant subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While Complainant's Motion to Dismiss was pending, Complainant voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against Complainant (which Complainant has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, Complainant's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the

procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. *See BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if Complainant was a labor organization, Respondent has the right to restrict Complainant's activity on its private property. *See NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its protesting activity. Neither the Complaint nor the Temporary Restraining Order seek to enjoin Complainant from continuing its protesting activity on public property, mere yards away from Respondent's business. Indeed, Complainant has continued its protesting activity on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, is protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for Complainant engaging in protected concerted activity. Initially, Complainant is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in Complainant's protesting activity. Complainant had not, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, Complainant's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. *See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant has always, and continues to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited its employees' rights to self-organize or engage in protected concerted activities, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

V. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal. Moreover, Complainant has not demonstrated that Respondent engaged in

“discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, Complainant is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiogale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int’l, Inc. v. Int’l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. Respondent states that it has not refused to hire any individual based on an antiunion animus.

As Complainant is not a labor organization and has failed to allege any facts in support of its claim, Complainant’s claim must be dismissed.

VI. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant asserts a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of Respondent’s employees authorized it to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir. 1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that it is the representative of Respondent’s employees, and accordingly, Respondent was under no duty to bargain collectively with Respondent.² For that reason, Respondent did not violate Section 8(a)(5).

VII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant’s Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and its attorney, are unhappy with

² Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent’s employees or seeking to obtain voluntary recognition by Respondent. See *Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); see also *Kobell v. United Food and Commercial Workers Int’l Union*, 788 F.2d 189, 194 (3d Cir. 1986).

Ms. Catherine Schlabowske
National Labor Relations Board, Region 13
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the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. It has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC

Handwritten signature of Elliot Richardson, consisting of the initials 'ER' followed by a vertical line and the number '102'.

Elliot Richardson /102

cc: Personnel Staffing Group, LLC



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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About Us

Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC has a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.

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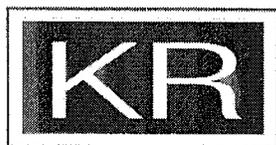
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April 24, 2015

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Field Examiner
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**RE: Chicago Workers' Collaborative v. MVP Workforce, LLC
Case No. 13-CA-149591**

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Initially, the litigation referenced by Complainant was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because the CWC, through its employees and agents, trespassed on Respondent's private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order prohibiting such trespasses, and that injunctive relief remains in effect today. Complainant additionally filed a motion to dismiss Respondent's Complaint, which has been denied.

Further, Respondent did not hold a job fair on September 24, 2014 and Respondent did not have any part in said job fair. Also, Complainant is not a labor organization under the NLRA and is not entitled to any protections as such. Finally, Complainant's Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against Complainant because it was engaging in wrongful conduct, and obtained injunctive relief that remains intact. In response, Complainant's attorney has now brought a slew of NLRB claims against Respondent on behalf of Complainant and individuals apparently associated with Complainant. Complainant's Charge is meritless, and Respondent requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, Complainant began an extensive campaign against Respondent and other area temporary labor service agencies, including Personnel Staffing Group, LLC ("PSG"). During that time, Complainant traveled to Respondent's Cicero branch office location and on several occasions, blocked ingress and egress to the premises. Complainant's employees and supporters, who were not employed by Respondent, also illegally entered Respondent's business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, Complainant would distribute flyers, while trespassing upon Respondent's property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the Complainant, its employees and associates refused to cease trespassing upon Respondent's premises and illegally disrupting its business operations.

On September 24, 2014, PSG held a job fair for individuals in the Chicagoland community. Neither Respondent nor its representatives were present at this job fair.

As a result of Complainant's repeated trespasses onto Respondent's private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against Complainant and two individuals employed by Complainant, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers' Collaborative*, Case No. 2014 CH 16104 (the "State Court Litigation").

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that Complainant be enjoined from trespassing into Respondent's private business and blocking ingress and egress to and from Respondent's office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent's Motion for a Temporary Restraining Order. The Temporary Restraining Order provided that Complainant was "temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL."¹

¹ Respondent's Cicero office is located at 5017 West Cermak Road, Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of PSG, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent's Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, Complainant filed a Motion to Dismiss Respondent's Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied Complainant's Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, Complainant consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

II. Respondent Is Not A "Single Employer" With Personnel Staffing Group, LLC

Respondent cannot be held liable for any acts or omissions of PSG. Although Complainant has filed the present Charge Against Employer against both PSG and Respondent, Complainant alleges no facts supporting its proposition that Respondent is a single employer with PSG. Respondent and PSG are two separate legal entities. *See Esmark, Inc. v. NLRB*, 887 F.2d 739, 753 (7th Cir. 1989). Based on the standard set forth in previous NLRB decisions, Respondent and PSG are not a single employer, and Complainant's Charge must be dismissed.

III. Complainant Is Not A "Labor Organization" Nor An "Employee" of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees' rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that Complainant is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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.3 354, 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.*

Complainant is not a labor organization “dealing with” employers. Initially, Complainant 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> (last accessed April 20, 2015), and attached hereto as Exhibit A). Complainant 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. A). In other words, Complainant 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. Nor does Complainant identify itself as “dealing with” employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that it merely “supported concerted activity.” (See Charge Against Employer). Furthermore, Complainant is not identified as a “labor organization” by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As Complainant’s organization consists of “social advocacy, legal services, and job-support services,” it is not a “labor organization” 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. Both 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. A with “Restaurant Opportunities Center of New York,” www.rocny.org (last access April 20, 2015)). However, neither entity has a pattern nor practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). Complainant, much like ROCNY, focuses on advocacy and education of workers’ rights, according to its own website. (*See* Ex. A). Although Complainant has passed out flyers about workers’ rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. It clear from Complainant’s Charge against Employer, as well as its description of its organization, that it is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant’s claims arise out of Section 8(a)(1) and (3) based on its supposed status as a labor organization, those claims lack merit and must be dismissed.

IV. Complainant’s Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that it, and other unidentified individuals, participated in a protest and attended a job fair on Respondent’s premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom it alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). As noted above, Respondent had no involvement in the September 24, 2014 job fair. Regardless, these claims are barred by the statute of limitations in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (although Respondent had no part in the job fair) and October 9, 2014 (the Circuit Court Judge’s entry of the Temporary Restraining Order), it is clear that Complainant’s Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts complained of occurred in September 2014, it is undeniable that Complainant’s claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant’s duty and responsibility to ensure that the Charge was served on Respondent 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).

V. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its suit in the Circuit Court of Cook County, Illinois against Complainant and two individuals who are not employees of Respondent. None of Respondent's employees are named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent's employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by Complainant. On October 7, 2014, Respondent filed its Complaint and an Emergency Motion for a Temporary Restraining Order. Respondent's Motion for a Temporary Restraining Order requested only that Complainant be prohibited from blocking ingress and egress to Respondent's office and from entering the private premises of Respondent's office. After both notice and a hearing (during which time Complainant's counsel was present), the Honorable Judge Larsen entered a Temporary Restraining Order.

Complainant subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While Complainant's Motion to Dismiss was pending, Complainant voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against Complainant (which Complainant has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, Complainant's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the

procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. *See BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if Complainant was a labor organization, Respondent has the right to restrict Complainant's activity on its private property. *See NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seeks to enjoin Complainant from continuing its activities on public property, mere yards away from Respondent's business. Indeed, Complainant has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, is protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for Complainant engaging in protected concerted activity. Initially, Complainant is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in Complainant's activities. Complainant had not, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, Complainant's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. *See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant has always, and continues to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited, in any manner, its employees' rights to self-organize or engage in protected concerted activity, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

VI. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal. Moreover, Complainant has not demonstrated that Respondent engaged in

“discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, Complainant is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiongale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int’l, Inc. v. Int’l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. Respondent states that it was not present during the September 24, 2014 job fair, and thus, did not refuse employment to any individual for actions arising out of said job fair.

As Complainant is not a labor organization and has failed to allege any facts in support of its claim, Complainant’s claim must be dismissed.

VII. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant asserts a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of Respondent’s employees authorized it to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir. 1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that it is the representative of Respondent’s employees, and accordingly, Respondent was under no duty to bargain collectively with Respondent.² For that reason, Respondent did not violate Section 8(a)(5).

² Respondent adamantly denies that Complainant is a labor organization. However, if Complainant is claiming that it is a labor organization, then it has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent’s employees or seeking to obtain voluntary recognition by Respondent. *See Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); *see also Kobell v. United Food and Commercial Workers Int’l Union*, 788 F.2d 189, 194 (3d Cir. 1986).

VIII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and its attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. It has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson /br

cc: MVP Workforce, LLC



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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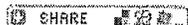
Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC has a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.



Our Partners

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Centro de Trabajadores Unidos
Latino Union of Chicago

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Chicago, Waukegan and Rolling Meadows, IL

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KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Jose Solorzano v. Personnel Staffing Group, LLC
Case No. 13-CA-149592**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent Personnel Staffing Group, LLC d/b/a Most Valuable Personnel ("PSG" and/or "Respondent") in this matter. Please direct all correspondence, questionnaires, and information requests to my attention.

Mr. Jose Solorzano ("Complainant") has asserted meritless claims against Respondent. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity and also filed a lawsuit against "persons and an association of persons who engaged in and supported concerted activity." (*See Charge Against Employer*). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*). Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent's working conditions and a job fair occurring on September 24, 2014. (*Id.*). Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act ("NLRA").

As an initial matter, the litigation referenced by Complainant was filed against a third-party organization (the Chicago Workers' Collaborative), which is not a labor organization, and two individuals employed by that organization. The litigation was not filed against Complainant. Moreover, the litigation was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because individuals trespassed on Respondent's private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order and that injunctive relief remains in effect today. The Chicago Workers' Collaborative (the "CWC") additionally filed a motion to dismiss, which has been denied.

Complainant's claim that he was not assigned work because of engaging in protected activity is also without merit for the reasons as will be discussed below. Finally, Complainant's Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against the CWC because it was engaging in wrongful conduct and obtained injunctive relief that remains intact. In response, the attorney representing this organization in the state court litigation and individuals apparently associated with the CWC have now brought a slew of NLRB claims against Respondent. This is one of those claims. It is without merit and Respondent respectfully requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, a third-party organization, the CWC began an extensive campaign against Respondent and other area temporary labor service agencies. During that time, the CWC traveled to Respondent's Cicero branch office location and on several occasions, blocked ingress and egress to the premises. CWC employees and supporters, who were not employed by Respondent, also illegally entered Respondent's business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, CWC would distribute flyers, while trespassing upon Respondent's property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the CWC, its employees and associates refused to cease trespassing upon Respondent's premises and illegally disrupting its business operations.

On September 24, 2014, Respondent held a job fair for individuals in the Chicagoland community to fill out applications and to ask questions regarding Respondent's business. This job fair occurred on Respondent's property. During the job fair, four unknown individuals employed by the CWC stopped individuals from attending the community job fair by blocking access to the job fair and telling potential applicants that Respondent stole employees' wages, discriminated against employees, and refused to send injured employees to approved medical facilities. If an individual did fill out an application at the job fair, the CWC's employees would again stop the applicants in an effort to persuade them from working for Respondent.

The CWC then sent individuals into Respondent's business to apply for work, but when called for an assignment, refused to work for Respondent, stating they were "not interested." CWC employees also came inside Respondent's office, harassed its employees and interfered with its prospective economic relationships. As a result of the CWC's repeated trespasses onto Respondent's private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against the CWC and two individuals employed by the CWC, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers' Collaborative*, Case No. 2014 CH 16104 (the "State Court Litigation").

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that the CWC be enjoined from trespassing into Respondent's private business and blocking ingress and egress to and from Respondent's office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent's Motion for a Temporary Restraining

Order. The Temporary Restraining Order provided that the CWC was “temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent’s Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, the CWC filed a Motion to Dismiss Respondent’s Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied the CWC’s Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, the CWC consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

Regarding Complainant, Complainant filled out an application for employment with Respondent on September 24, 2014. (A copy of Complainant’s Application is attached hereto as Exhibit A). However, when Respondent called to offer Complainant a job assignment, he turned down the assignment. (*See* Affidavits of Monica Hernandez and Ilse Bahena, attached hereto as Exhibits B and C respectively).

II. The CWC Is Not A “Labor Organization” Nor An “Employee” of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees’ rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that the CWC is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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

¹ Respondent’s Cicero office is located at 5637 West Roosevelt Road in Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of MVP Workforce, LLC, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

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. Initially, 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> (last accessed April 20, 2015), and attached hereto as Exhibit D). 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. D). 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. Nor does Complainant identify the CWC as “dealing with” employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that some unknown individuals “supported concerted activity.” (See Charge Against Employer). Furthermore, the CWC is not identified as a “labor organization” by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC’s organization consists of “social advocacy, legal services, and job-support services,” it is not a “labor organization” 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 the CWC serve similar functions within their communities. Both 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. D with "Restaurant Opportunities Center of New York," www.rocny.org (last access April 20, 2015)). However, neither entity has 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, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See* Ex. D). Although the CWC has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. Therefore, to the extent that Complainant's Charge is based on his potential association with the CWC, it is clear that the CWC is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant claims arise out of Section 8(a)(1) and (3) based on the CWC's supposed status as a labor organization, those claims lack merit and must be dismissed.

III. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that presumably he, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom he alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). However, to the extent that Complainant's claims arise out of the actions on September 24, 2014 or the Temporary Restraining Order entered against the CWC, those claims are barred by the statute of limitations set forth in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (the supposed underlying concerted activity) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

IV. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its suit in the Circuit Court of Cook County, Illinois against the CWC and two individuals who are not employees of Respondent. None of Respondent's employees are named in the suit. Complainant is not named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent's employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by the CWC. On October 7, 2014, Respondent filed its Complaint and an Emergency Motion for a Temporary Restraining Order. Respondent's Motion for a Temporary Restraining Order requested only that the CWC be prohibited from blocking ingress and egress to Respondent's office and from entering the private premises of Respondent's office. After both notice and a hearing (during which time the CWC's counsel (who also represents Complainant) was present), the Honorable Judge Larsen entered a Temporary Restraining Order.

The CWC subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While the CWC's Motion to Dismiss was pending, the CWC voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First

Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against the CWC (which the CWC has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, the CWC's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. See *BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if the CWC was a labor organization (which it is not), Respondent has the right to restrict the CWC's activity on its private property. See *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seek to enjoin the CWC or any other individuals (including Complainant) from continuing its activities on public property, mere yards away from Respondent's business. Indeed, the CWC has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, are protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for either the CWC or Complainant engaging in protected concerted activity. Initially, Respondent's Complaint was not filed against Complainant, nor did Respondent mention Complainant in the Complaint. Further, the CWC is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in the CWC's activities. Neither the CWC nor Complainant had, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, the CWC's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. See *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant and the CWC have always, and continue to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited its employees' rights to self-organize or engage in protected activities, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

V. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support in order to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal.² Moreover, Complainant has not demonstrated that Respondent engaged in “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, the CWC is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiogale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int'l, Inc. v. Int'l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. However, to the extent that Complainant complains of himself, according to Respondent’s records, Complainant applied for, and was offered, a job assignment on or about September 25, 2014. Complainant refused that job assignment. (See Ex. A; Ex. B; Ex. C). As noted herein, the CWC is not a labor organization, but regardless, Respondent did offer Complainant a job assignment. Accordingly, Respondent did not discriminate against Complainant in any manner.

As Complainant has failed to allege any facts in support of his claim and the CWC is not a labor organization, Complainant’s claim must be dismissed.

VI. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant purports to assert a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of

² Respondent notes that an unfair labor practice charge may be filed by anyone. *Palisade Nursing Center*, Case No. 22-CA-28154, 2010 NWL 2180789 (2010) (citing *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB 230 (1973) for the proposition that any person can file an NLRB charge). Complainant alleges that he was “impacted” by the alleged retaliation, but does not specifically state that Respondent refused to assign him to work. Accordingly, Respondent cannot be sure if Respondent filed his Charge on behalf of himself or other unidentified individuals.

Respondent's employees authorized either her or the CWC to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir. 1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that he or the CWC is the representative of Respondent's employees, and accordingly, Respondent was under no duty to bargain collectively with Complainant or the CWC.³ For that reason, Respondent did not violate Section 8(a)(5).

VII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and his attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. He has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson /b2

cc: Personnel Staffing Group, LLC

³ Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent's employees or seeking to obtain voluntary recognition by Respondent. *See Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); *see also Kobell v. United Food and Commercial Workers Int'l Union*, 788 F.2d 189, 194 (3d Cir. 1986).



EMPLOYMENT APPLICATION/ENGLISH

1st & 2nd shift

NO CAR

Most Valuable Personnel
Division of Personnel Staffing Group, LLC

CALL 9125



Last Name: Solorzano First Name: Jose

Address: 4360 W 25th Pl

City: Chicago State: IL Zip Code: 60623

Phone Number: (773) 916 16 79 Alternate Number: (773) 918 34 75

Social Security Number: [Redacted] Are you over 18? YES

What shift/hours are you available to work? any time

Previous Employment: Pizza Patron

Address: 2312 S Cicero Ave

Phone Number: 708 652 78 75 Supervisor's Name: Julio

May we contact your previous employer? YES Start Date: 12/02/13 End Date: 06/13/14

Job Duties: Shift Leader

Company Name: Cicero Police Explorers

Address: 4901 W Cermak Rv

Phone Number: 708 652 2130 Supervisor's Name: maria de portis

May we contact your previous employer? YES Start Date: 04/10/13 End Date: 09/10/14

Job Duties: Cicero Police Explorers

Do you have your own transportation to/from work? NO

I agree to conform to the rules and regulations of Most Valuable Personnel, hereinafter referred to as MVP, and understand that my employment may be terminated for any cause at any time. If injured during work I am to report accidents to MVP. Work-related injuries or illness are subject to be tested for the presence of drugs and/or alcohol. Refusal to be tested will be reason for dismissal. I understand that I am applying for temporary work assignments with MVP, and MVP is the "employer of record". I authorize MVP to verify my information for employment. I authorize MVP to check my information for any criminal activity. I authorize MVP to administer a drug screen prior to employment. I have read and understand this application and the above statements.

Yo estoy de acuerdo en ajustarme a las reglas y regulaciones de Most Valuable Personnel, que se referirá en todo el contexto como MVP, y entiendo que mi empleo puede terminar por cualquier causa. Si me lastime durante horas de trabajo debo de reportar cualquier accidente a MVP. Accidentes o enfermedades relacionados con el trabajo son sujetos a ser examinados para detectar la presencia de drogas y/o alcohol. Yo entiendo que estoy aplicando para una asignación de trabajo temporal con MVP, y MVP es el empleador del registro. Yo autorizo a MVP a verificar mi información para empleo, verificar mi información por alguna actividad criminal, y a administrar una prueba de drogas antes de emplearme si es necesario. Yo leí y entiendo esta aplicación y las declaraciones mencionadas arriba.

Employee Signature: [Signature] Date: 09/24/14

Can you speak or read English? yes i do
¿Hablas o lees Ingles?

How fluently? 90%
¿Cuanto por ciento (ejemplo 20%, 60%, 100%)?

Skill Evaluation, please mark an "X" at your skills

Evaluación de experiencia, ponga una "X" en lo que tiene de experiencia

Warehouse

- Assembly (Ensamblar)
- Book Bindery (Ensamblando Libros/Carpetas)
- Inventory (Inventario)
- Picking (Seleccionador)
- Packing (Empacador)
- Shipping/Receiving (Recibiendo/Mandando Ordenes)
- Forklift, please specify (Maquina de Monte Carga)
 - Stand-Up Sit Down
 - Cherry Picker Slip Sheet
 - Clamp Turret

Forklift Certified? Yes No

Tienes licencia de monte carga? Si No

Manufacturing

- Machine Operator (Operador de Maquina)
- Specify Type(s) _____
- Que Tipo(s) _____
- Punch Press (Maquina de Presión)
- Set-Up Experience (Armar/Montar o Programar Maquinas)

Clerical

- Receptionist (Recepcionista)
- Secretarial (Secretaria)
- Data Entry (Entrada de Datos)
- Customer Service (Servicio al Cliente)
- Typing (Teclado) Speed (PPM) _____
- Computer Skills (Computación)
- Specify Software _____
- Que Tipo de Programas _____

Food Service:

- Cook (Cocinar)
- Dish Washer (Lavaplatos)
- Server (Servidor)

House keeping/Cleaning

- Office (Oficinas)
- Hotel (Hoteles)
- Janitorial (Limpieza)

Electronics

- Soldering (Soldar Cautfn)
- Read Schematics (Leer Esquemático Electrónico)
- Wiring Assembly (Ensamblar Cables Electrónico o Alambres)
- Blue Print Reading (Leer Planos)

Other Skills

- Carpentry (Carpintero)
- Cashier (Cajero)
- Driver (Conductor)
- Type of Driver's License (Que clase de licencia)
- Security Guard (Guardia de Seguridad)
- Sewing (Maquina de Coser)
- Welding (Soldador con Arco Eléctrico o con Soplete)
- Mechanic, Automobile (Mecánico)
- Maintenance, Building (Mantenimiento)
- Lifting Capabilities _____
- Capacidad para levantar _____

POLICIES AND PROCEDURES

1. All employees are responsible for learning and complying with all safety and health regulations that are applicable to their work.
2. All employees shall wear personal protective equipment when required.
3. Employees exposed to flying particles, chips, etc. shall wear eye protection.
4. Employees shall look presentable in clean and appropriate clothing. No shorts, sleeveless shirts, revealing clothing or offensive logos on any part of clothing.
5. Employees may not wear jewelry to any job site other than a wedding band.
6. Employees will report to their dispatcher at their scheduled time, work their set hours, and be on time for all assignments.
7. Employees who walk off a job assignment with no prior authorization will be written up for first offense and terminated for second offense.
8. Horse playing, fighting and other unsafe acts of behavior are prohibited.
9. Employees shall not be insubordinate to any personnel or their assigned supervisor. Any conflicts or situations with a supervisor should be reported to your employer immediately.
10. Employees shall report any potential unsafe health hazards to their supervisors.
11. Proper respiratory protection is necessary when working with solvents, paints, chemicals, or dust that may cause eye irritation. Review MSD (Material Safety Data) Sheets.
12. Only trained and qualified personnel shall operate equipment and machinery. Work given outside of your scope should be reported to a supervisor for reassignment.
13. Employees shall report all accidents and incidents that have occurred on the job, immediately to the supervisor, including minor first aid injuries.
14. Any employee under drugs or any intoxicating influences shall not be allowed on the job and is subject to immediate termination.
15. Any changes made by the customer at the job site that are different than the initial set up by the dispatcher, such as wage changes, must be reported and approved by dispatch management.
16. Employees shall come in person to pick up their payroll check. Do not send relatives or friends. Employee ID required to pick up check.
17. Employees shall not have any personal cell phones inside client buildings make personal calls or have visitors while working at any jobsite.

Employee Name

Jose Solorzano

Date

09/22/14

Employee Signature



CONSENT AND RELEASE FORM FOR DRUG AND ALCOHOL POLICY

To protect the health and safety of all our employees, Most Valuable Personnel enforces a "Drug/Alcohol Policy" which prohibits the possession, sale, use or being under the influence of alcohol or drugs during company time, other than the use of prescribed drugs. Violation of this policy will subject you to immediate dismissal.

- 1) I understand as part of being employed by Most Valuable Personnel that I may be subject to drug and alcohol testing in the event that I am involved in a job-related accident that requires medical attention.
- 2) I understand as an employee of Most Valuable Personnel, I may be required to be drug and alcohol tested in the event that I am involved in a job-related accident, and that I may be suspended until the results of the test are known.
- 3) Any work-related injuries requiring a doctor's attention will be drug and alcohol screened. I understand that a positive test will exonerate Most Valuable Personnel and its workers compensation carrier from any liability as a result of said accident as well as possible termination of employment.
- 4) Any employee whose test indicates the presence of any controlled substances regardless of the amount (unless prescribed in writing by a medical doctor) shall be terminated for a serious misconduct of company policy.
- 5) Any employee whose blood alcohol level tests turns out to be .05% or higher shall be deemed under the influence of alcohol and will be terminated for a serious misconduct of a company policy.
- 6) I will hold the doctor, hospital staff, Most Valuable Personnel, harmless for the taking of any and all samples and testing.
- 7) I understand that failure or refusal to cooperate with any of the above-prescribed procedures for any reason shall constitute serious misconduct of the policies of Most Valuable Personnel, and I will be subject to immediate termination of employment.

I understand that submission to a drug/alcohol test in accordance with established policy is a condition of employment with Most Valuable Personnel, and consent to provide a urine and/or blood specimen for drug and/or alcohol testing as provided above when requested by Most Valuable Personnel. I also consent to the release of the results of this testing to a representative of Most Valuable Personnel

Employee Name Jose Soloscano Date 09/27/14

Employee Signature 

SEXUAL AND OTHER UNLAWFUL HARASSMENT POLICY

We are committed to providing a work environment that is free of discrimination and unlawful harassment. Actions, words, jokes, or comments based on an individual's sex, race, ethnicity, religion or any other legally protected characteristics will not be tolerated. Harassment (both overt and subtle) is a form of employee misconduct that is demeaning to another person, undermines the integrity of the employment relationship, and is strictly prohibited.

Any employee who wants to report an incident of harassment should promptly report the matter to his/her manager. Employees can raise concerns and make reports without fear of reprisal. Any manager who becomes aware of possible sexual or other unlawful harassment should handle the matter in a timely and confidential matter.

Anyone engaging in harassment will be subject to disciplinary action, up to and including termination of employment.

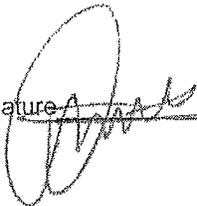
Employee Name

Jose Solorzano

Date

09/29/14

Employee Signature

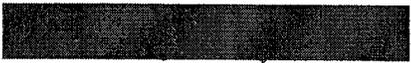


RELEASE OF CRIMINAL RECORDS

I, the undersigned, do hereby authorize Most Valuable Personnel to examine any and all criminal records and arrests on file in the United States of America. In doing so, I understand that I am waiving my right of confidentiality concerning my criminal history.

Print Applicant's Full Name: Jose Solorzano

Driver's License Number: N/A

Social Security Number: 

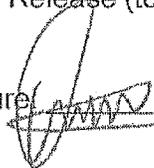
Street Address: 4360 W 25th Pl

City: Chicago

State: IL

Zip Code: 60623

Date of Release (today): 02/24/14

Signature: 

GUIDELINES TO GOOD MANUFACTURING PRACTICES (GMP)

GMP's are regulations that are enforced by the Food and Drug Administration. Personnel in contact with product or packaging are required to be clean, healthy, and appropriately dressed so that they will not adversely affect the finished products.

Note: EVERY EMPLOYEE WILL HAVE THEIR MVP IDENTIFICATION (I.D.) ON THEM AND PROPERLY DISPLAYED THROUGHOUT THEIR SCHEDULED SHIFT.

1. Appropriate clothing for the food processing environment:
 - A. Long Pants
 - B. Knee length skirts with hose.
 - C. Shirts/Blouses, must have a half sleeve (No sleeveless shirts or tank tops), and be free of glitter, beads, fringes, etc.
 - D. Socks must be worn at all times with closed shoes. (High heels, open-toed, clogs, or sandals are prohibited.)
 - E. Clothing which is free of printed messages or images which are obscene or offensive.
2. Wash hands prior to work and after each visit to the locker room, restroom, or lunchroom.
3. Do not handle products when hands are cut or infected; if wearing a band-aid, gloves must be worn.
4. Be clean shaven. Beard nets must be worn when sideburns extend below the ear and when mustaches extend below the corners of the upper lip. Beards must be trimmed and neat and beard covers must be worn at all times. One day growth requires a beard cover.
5. Company issued hairnets must be worn properly at all times to ensure that all hair is covered.
6. Fingernails are to be trimmed to the end of your finger and clean. False eyelashes, false fingernails and fingernail polish is STRICTLY PROHIBITED.
7. Keep hands away from mouth, nose, ears, and scalp.
8. Candy, chewing gum, tobacco, cigarettes, etc. are not allowed in the production area at any time. The eating of ingredients and/or finished products in the production areas is not allowed. (includes the warehouse and coolers)
9. Jewelry may not be worn (Rings, watches, earrings, pins, brooches, etc.) Body piercing to the tongue, eyebrows, nose, lips, etc. is STRICTLY PROHIBITED.
10. Pen, pencils, eyeglasses, etc. may not be clipped to the front of the shirt or carried in pockets above the waist.
11. Brushes, scrapers, or other implements to be used with or that will come in contact with food, may not be carried in pockets nor should these items be placed on unsanitary surfaces, such as ledges, racks, stairs, etc.
12. Keep all utensils clean and in good condition; these items should not be placed on the floor or on unclean surfaces.
13. Do not place power cords, guards, tools, equipment parts, etc. on product zones or on the floor.
14. Do not walk, sit, or stand on products contact zones or ingredient containers, even on non-production days.
15. Packaging material should be treated as though they were an ingredient.
16. Lunches should not be brought into the production areas. Store your lunches in the refrigerator provided.
17. Do not clean floors or uniforms with air hoses. Only approved safety blow gun may be used to clean specific equipment and the operator must wear approved safety goggles and clear the area of people not wearing eye protection.
18. Avoid creating a mess when handling ingredients. If spillage occurs, clean up the area immediately, as time permits. Continually keep work areas clean, neat and orderly.
19. Do not use ingredients containers for catch pans under leaks. Ingredient containers may not be used for any purpose other than to contain the ingredient intended for storage within the container.
20. Keep all outside doors closed when not in use. Do not prop open self-closing doors.
21. Any evidence of fruit flies, cockroaches, flour beetles, birds, or rodents must be reported immediately.
22. Lubrication of machinery must not be excessive to the extent that it may enter or drop into the production zone. Grease fittings should be wiped off after greasing.
23. Immediately report any loose paint, rust, oil leaks and condensation over the product zones.
24. Catch pans must be in place at all times to facilitate sanitation at the end of the shift and to ensure neat work areas.
25. Glass of any kind is prohibited in the manufacturing area.

I understand and will comply with these practices. I also understand that failure to do so may result in termination of my employment.

Employee Name

Joseph Sciorano

Date

09/24/14

Employee Signature

[Signature]

REPORTING OF WORK RELATED INJURIES AND INCIDENTS

PURPOSE: To ensure the prompt reporting of all work-related injuries and incidents that occur while a MVP Core or Service Employee is working for MVP Staffing.

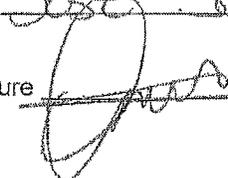
Person(s) Responsible: All MVP Core and Service Employees

Procedure: When injured on the job or when you have knowledge of a work-related injury or incident it is mandatory that the injury and/or incident be reported **immediately** to a MVP Representative. The injury and/or incident should be reported in person, if at all possible.

Any employee who fails to report a work related injury or incident to a MVP Representative will be subject to suspension without pay for three consecutive business days (or three consecutive scheduled days). Additionally, any MVP employee who is witness to or aware of an injury and/or incident to another MVP employee and does not report it immediately will be subject to suspension without pay for three business days.

Please sign this form below to indicate you understand this policy.

Employee Name Jose Solorzano Date 06/29/14

Employee Signature 

APPLICATION CERTIFICATION

I understand my employment may be contingent upon the results of a background investigation. I am aware any omission, falsification, misstatement or misrepresentation could lead to the basis for my disqualification as an applicant or my dismissal from Most Valuable Personnel, hereinafter referred to as MVP.

I am aware any and all documents or information (including this application) submitted to MVP may be subject to Public Records Law with the exception of certain personal information, which may be exempted under state law.

I further understand I may be required to take drug testing during the term of my employment with MVP.

I understand the use of alcohol by an employee is prohibited during work or while on the premises, whether paid or unpaid, in any work area within MVP or any client of MVP.

I understand the use of or possession of illegal drugs by employees is prohibited at any time, whether on or off duty.

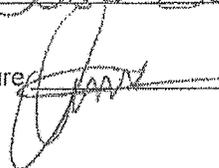
I understand that employees are required to notify their immediate supervisor prior to or at the start of their work shift if they are taking prescription medicine, or other medication, which may impair their normal work responsibilities.

I understand my continued employment may be contingent upon the results of medical or psychological examinations, which I may be required to take during the term of my employment.

I understand and agree my acceptance for employment does not offer or guarantee any proprietary rights for continued employment.

I agree to conform to the rules, regulations and orders as set forth by MVP and acknowledge those rules, regulations, and orders may be changed, interpreted, withdrawn or added to by MVP, at their discretion, at any time and without any prior notice to me.

Employee Name Jose Solorzano Date 06/29/14

Employee Signature 

CONTACT MVP AFTER COMPLETION OF WORK ASSIGNMENT

After completion of work assignment, Employee hereby agrees to keep in constant contact with MVP (at least once a week) in order to notify MVP as to whether they are available to take on a new work assignment.

Employee's failure to keep in constant contact with MVP (at least once a week) after completion of a work assignment may result in suspension of unemployment benefits, if any, by the Illinois Department of Employment Security.

By signing below, Employee hereby states that he/she has read and fully understands this policy.

Employee Name: Jose Solorzano

Employee Signature: 

Date: 09/27/14

NATIONAL LABOR RELATIONS BOARD

JOSE SOLORZANO,)
)
 Complainant,)
)
 v.) Case No. 13-CA-149592
)
 PERSONNEL STAFFING GROUP, LLC,)
)
 Respondent.)

AFFIDAVIT OF MONICA HERNANDEZ

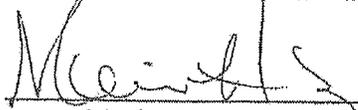
I, MONICA HERNANDEZ, being first duly sworn upon oath, do depose and state as follows:

1. I have personal knowledge of the facts stated herein and if called to testify in this matter, I could competently testify as to all of the facts set forth in this Affidavit.
2. At all relevant times, I have been employed as a dispatcher for Personnel Staffing Group, LLC d/b/a Most Valuable Personnel ("PSG") at its Cicero office branch location.
3. I have knowledge of, and was present during, the community job fair put on by PSG on September 24, 2014.
4. On several occasions in the months and days before the job fair, groups of individuals protested against PSG both on the public sidewalk outside PSG's office. Some of these individuals also entered PSG's office and disrupted business operations.
5. During the job fair, a couple individuals whom I had previously seen protesting applied for employment with PSG.
6. One of those individuals was Jose Solorzano.
7. On both September 24, 2014 and September 25, 2014, we had open job orders and both myself and two other dispatchers, Lucia Campos and Ilse Bahena, called all of the individuals who had applied for work during the job fair, including Jose Solorzano.
8. When we called the individuals who had been protesting, they turned down the job assignments we offered, stating that they were either not interested or had only filled out the application, but did not want to work.
9. Other individuals did not answer their phones when called.

10. To the best of my recollection, Jose Solorzano was one of the individuals who turned down the job assignment offered.

11. When we called the individuals on September 24, 2014 and September 25, 2014, we put a star on the front of their application to indicate that we called them and offered them a job assignment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24 day of April, 2015.



Monica Hernandez

SUBSCRIBED AND SWORN to before me
this 24 day of ~~February~~ April, 2015.



NOTARY PUBLIC



NATIONAL LABOR RELATIONS BOARD

JOSE SOLORZANO,)
)
 Complainant,)
)
 v.) Case No. 13-CA-149592
)
 PERSONNEL STAFFING GROUP, LLC,)
)
 Respondent.)

AFFIDAVIT OF ILSE BAHENA

I, ILSE BAHENA, being first duly sworn upon oath, do depose and state as follows:

1. I have personal knowledge of the facts stated herein and if called to testify in this matter, I could competently testify as to all of the facts set forth in this Affidavit.
2. At all relevant times, I have been employed as a dispatcher for Personnel Staffing Group, LLC d/b/a Most Valuable Personnel ("PSG") at its Cicero office branch location.
3. I have knowledge of, and was present during, the community job fair put on by PSG on September 24, 2014.
4. On several occasions in the months and days before the job fair, groups of individuals protested against PSG both on the public sidewalk outside PSG's office. Some of these individuals also entered PSG's office and disrupted business operations.
5. During the job fair, a couple individuals whom I had previously seen protesting applied for employment with PSG.
6. One of those individuals was Jose Solorzano.
7. On both September 24, 2014 and September 25, 2014, we had open job orders and both myself and two other dispatchers, Lucia Campos and Monica Hernandez, called all of the individuals who had applied for work during the job fair, including Jose Solorzano.
8. When we called the individuals who had been protesting, they turned down the job assignments we offered, stating that they were either not interested or had only filled out the application, but did not want to work.
9. Other individuals did not answer their phones when called.

10. To the best of my recollection, Jose Solorzano was one of the individuals who turned down the job assignment offered.
11. When we called the individuals on September 24, 2014 and September 25, 2014, we put a star on the front of their application to indicate that we called them and offered them a job assignment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24 day of April, 2015.

Ilse Bahena
Ilse Bahena

SUBSCRIBED AND SWORN to before me
this 24 day of ~~February~~ April, 2015.

Natalie R
NOTARY PUBLIC





Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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CWC Members And Supporters Deliver Message Loud And Clear To Temp Staffing Agencies: No More Abuse! We Want Respect, And A Voice At Work!

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About Us

Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC has a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.

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Our Partners

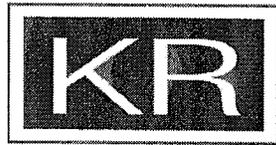
National Staffing Workers Alliance
Warehouse Workers for Justice
Centro de Trabajadores Unidos
Latino Union of Chicago

Our Campaigns

Campaigns
Justice at Staffing Network
The Temp Industry

Chicago Workers Collaborative
5014 S. Ashland
Chicago, IL 60609
www.chicagoworkerscollaborative.org
postmaster@chicagoworkerscollaborative.org
Toll Free: 1-877-77-LUCHA
Toll Free: 1-877-775-8242
Chicago, Waukegan and Rolling Meadows, IL

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KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Jose Solorzano v. MVP Workforce, LLC
Case No. 13-CA-149592**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent MVP Workforce, LLC (“MVP Workforce” and/or “Respondent”) in this matter. Please direct all correspondence, questionnaires, and information requests to my attention.

Mr. Jose Solorzano (“Complainant”) has asserted meritless claims against Respondent. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity and also filed a lawsuit against “persons and an association of persons who engaged in and supported concerted activity.” (*See Charge Against Employer*). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*). Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent’s working conditions and a job fair occurring on September 24, 2014. (*Id.*). Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act (“NLRA”).

As an initial matter, the litigation referenced by Complainant was filed against a third-party organization (the Chicago Workers’ Collaborative), which is not a labor organization, and two individuals employed by that organization. The litigation was not filed against Complainant. Moreover, the litigation was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because individuals trespassed on Respondent’s private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order and that injunctive relief remains in effect today. The Chicago Workers’ Collaborative (the “CWC”) additionally filed a motion to dismiss, which has been denied.

Further, Respondent did not hold a job fair on September 24, 2014 and Respondent did not have any part in said job fair. Complainant’s claim that he was not assigned work because of engaging in protected activity is also without merit for the reasons as will be discussed below. Finally, Complainant’s Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against the CWC because it was engaging in wrongful conduct and obtained injunctive relief that remains intact. In response, the attorney representing this organization in the state court litigation and individuals apparently associated with the CWC have now brought a slew of NLRB claims against Respondent. This is one of those claims. It is without merit and Respondent respectfully requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, a third-party organization, the CWC began an extensive campaign against Respondent and other area temporary labor service agencies, including Personnel Staffing Group, LLC (“PSG”). During that time, the CWC traveled to Respondent’s Cicero branch office location and on several occasions, blocked ingress and egress to the premises. CWC employees and supporters, who were not employed by Respondent, also illegally entered Respondent’s business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, CWC would distribute flyers, while trespassing upon Respondent’s property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the CWC, its employees and associates refused to cease trespassing upon Respondent’s premises and illegally disrupting its business operations.

On September 24, 2014, PSG held a job fair for individuals in the Chicagoland community. Neither Respondent nor its representatives were present at this job fair.

As a result of the CWC’s repeated trespasses onto Respondent’s private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against the CWC and two individuals employed by the CWC, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers’ Collaborative*, Case No. 2014 CH 16104 (the “State Court Litigation”).

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that the CWC be enjoined from trespassing into Respondent’s private business and blocking ingress and egress to and from Respondent’s office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent’s Motion for a Temporary Restraining Order. The Temporary Restraining Order provided that the CWC was “temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

¹ Respondent’s Cicero office is located at 5017 West Cermak Road, Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of PSG, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent's Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, the CWC filed a Motion to Dismiss Respondent's Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied the CWC's Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, the CWC consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

Respondent has no records of Complainant, and does not have any record that Complainant ever applied for work with Respondent. Respondent has no knowledge of any kind about Complainant, including whether or not Complainant participated in any organized activity with the CWC, or whether Complainant is a member of the CWC.

II. Respondent Is Not A "Single Employer" With Personnel Staffing Group, LLC

Respondent cannot be held liable for any acts or omissions of PSG. Although Complainant has filed the present Charge Against Employer against both PSG and Respondent, Complainant alleges no facts supporting its proposition that Respondent is a single employer with PSG. Respondent and PSG are two separate legal entities. *See Esmark, Inc. v. NLRB*, 887 F.2d 739, 753 (7th Cir. 1989). Based on the standard set forth in previous NLRB decisions, Respondent and PSG are not a single employer, and Complainant's Charge must be dismissed.

III. The CWC Is Not A "Labor Organization" Nor An "Employee" of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees' rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that the CWC is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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.3 354, 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. Initially, 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> (last accessed April 20, 2015), and attached hereto as Exhibit A). 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. A). 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. Nor does Complainant identify the CWC as "dealing with" employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that some unknown individuals "supported concerted activity." (See Charge Against Employer). Furthermore, the CWC is not identified as a "labor organization" by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC's organization consists of "social advocacy, legal services, and job-support services," it is not a "labor organization" 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 the CWC serve similar functions within their communities. Both 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. A with "Restaurant Opportunities Center of New York," www.rocny.org (last access April 20, 2015)). However, neither entity has 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, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See* Ex. A). Although the CWC has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. Therefore, to the extent that Complainant's Charge is based on his potential association with the CWC, it is clear that the CWC is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant's claims arise out of Section 8(a)(1) and (3) based on the CWC's supposed status as a labor organization, those claims lack merit and must be dismissed.

IV. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that presumably he, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom he alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). As noted above, Respondent had no involvement in the September 24, 2014 job fair. Regardless, these claims are barred by the statute of limitations in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (although Respondent had no part in the job fair) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts

complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

V. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its suit in the Circuit Court of Cook County, Illinois against the CWC and two individuals who are not employees of Respondent. None of Respondent's employees are named in the suit. Complainant is not named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent's employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by the CWC. On October 7, 2014, Respondent filed its Complaint and an Emergency Motion for a Temporary Restraining Order. Respondent's Motion for a Temporary Restraining Order requested only that the CWC be prohibited from blocking ingress and egress to Respondent's office and from entering the private premises of Respondent's office. After both notice and a hearing (during which time the CWC's counsel (who also represents Complainant) was present), the Honorable Judge Larsen entered a Temporary Restraining Order.

The CWC subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While the CWC's Motion to Dismiss was pending, the CWC voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against the CWC (which the CWC has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, the CWC's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. *See BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if the CWC was a labor organization, Respondent has the right to restrict the CWC's activity on its private property. *See NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seek to enjoin the CWC or any other individuals (including Complainant) from continuing its activities on public property, mere yards away from Respondent's business. Indeed, the CWC has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, are protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for either the CWC or Complainant engaging in protected concerted activity. Initially, Respondent's Complaint was not filed against Complainant, nor did Respondent mention Complainant in the Complaint. Further, the CWC is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in the CWC's activities. Neither the CWC nor Complainant had, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, the CWC's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. *See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant and the CWC have always, and continue to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited, in any manner, its employees' rights to self-organize or engage in protected concerted activity, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

VI. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support in order to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal.² Moreover, Complainant has not demonstrated that Respondent engaged in “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, the CWC is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiongale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int'l, Inc. v. Int'l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. Respondent states that it was not present during the September 24, 2014 job fair, and thus, did not refuse employment to any individual for actions arising out of said job fair. Moreover, Respondent has no records of Complainant ever applying for work with Respondent.

As Complainant has failed to allege any facts in support of his claim and the CWC is not a labor organization, Complainant’s claim must be dismissed.

VII. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant purports to assert a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of Respondent’s employees authorized either him or the CWC to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir.

² Respondent notes that an unfair labor practice charge may be filed by anyone. *Palisade Nursing Center*, Case No. 22-CA-28154, 2010 NWL 2180789 (2010) (citing *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB 230 (1973) for the proposition that any person can file an NLRB charge). Complainant alleges that he was “impacted” by the alleged retaliation, but does not specifically state that Respondent refused to assign him to work. Accordingly, Respondent cannot be sure if Respondent filed his Charge on behalf of himself or other unidentified individuals.

1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that he or the CWC is the representative of Respondent's employees, and accordingly, Respondent was under no duty to bargain collectively with Complainant or the CWC.³ For that reason, Respondent did not violate Section 8(a)(5).

VIII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and his attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, are being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. She has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson *lbr*

cc: MVP Workforce, LLC

³ Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent's employees or seeking to obtain voluntary recognition by Respondent. See *Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); see also *Kobell v. United Food and Commercial Workers Int'l Union*, 788 F.2d 189, 194 (3d Cir. 1986).



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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About Us

Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC have a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.

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Chicago, Waukegan and Rolling Meadows, IL

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EXHIBIT A



KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Isaura Martinez v. Personnel Staffing Group, LLC
Case No. 13-CA-149593**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent Personnel Staffing Group, LLC d/b/a Most Valuable Personnel ("PSG" and/or "Respondent") in this matter. Please direct all correspondence, questionnaires, and information requests to my attention.

Ms. Isaura Martinez ("Complainant") has asserted meritless claims against Respondent. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity and also filed a lawsuit against "persons and an association of persons who engaged in and supported concerted activity." (*See Charge Against Employer*). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*). Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent's working conditions and a job fair occurring on September 24, 2014. (*Id.*). Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act ("NLRA").

As an initial matter, the litigation referenced by Complainant was filed against a third-party organization (the Chicago Workers' Collaborative), which is not a labor organization, and two individuals employed by that organization. The litigation was not filed against Complainant. Moreover, the litigation was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because individuals trespassed on Respondent's private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order and that injunctive relief remains in effect today. The Chicago Workers' Collaborative (the "CWC") additionally filed a motion to dismiss, which has been denied.

Complainant's claim that she was not assigned work because of engaging in protected activity is also without merit for the reasons as will be discussed below. Finally, Complainant's Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against the CWC because it was engaging in wrongful conduct and obtained injunctive relief that remains intact. In response, the attorney representing this organization in the state court litigation and individuals apparently associated with the CWC have now brought a slew of NLRB claims against Respondent. This is one of those claims. It is without merit and Respondent respectfully requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, a third-party organization, the CWC began an extensive campaign against Respondent and other area temporary labor service agencies. During that time, the CWC traveled to Respondent's Cicero branch office location and on several occasions, blocked ingress and egress to the premises. CWC employees and supporters, who were not employed by Respondent, also illegally entered Respondent's business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, CWC would distribute flyers, while trespassing upon Respondent's property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the CWC, its employees and associates refused to cease trespassing upon Respondent's premises and illegally disrupting its business operations.

On September 24, 2014, Respondent held a job fair for individuals in the Chicagoland community to fill out applications and to ask questions regarding Respondent's business. This job fair occurred on Respondent's property. During the job fair, four unknown individuals employed by the CWC stopped individuals from attending the community job fair by blocking access to the job fair and telling potential applicants that Respondent stole employees' wages, discriminated against employees, and refused to send injured employees to approved medical facilities. If an individual did fill out an application at the job fair, the CWC's employees would again stop the applicants in an effort to persuade them from working for Respondent.

The CWC then sent individuals into Respondent's business to apply for work, but when called for an assignment, refused to work for Respondent, stating they were "not interested." CWC employees also came inside Respondent's office, harassed its employees and interfered with its prospective economic relationships. As a result of the CWC's repeated trespasses onto Respondent's private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against the CWC and two individuals employed by the CWC, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers' Collaborative*, Case No. 2014 CH 16104 (the "State Court Litigation").

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that the CWC be enjoined from trespassing into Respondent's private business and blocking ingress and egress to and from Respondent's office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent's Motion for a Temporary Restraining

Order. The Temporary Restraining Order provided that the CWC was “temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent’s Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, the CWC filed a Motion to Dismiss Respondent’s Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied the CWC’s Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, the CWC consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

Regarding Complainant, Respondent has records of Complainant first seeking a job assignment from Respondent in 2012. Complainant then sought job assignments from Respondent on a sporadic basis in 2012 and 2013. (A copy of Complainant’s Check History Report is attached hereto as Exhibit A). Respondent does not have any records of Complainant seeking a job assignment from Respondent since September 2013. (*See Ex. A*).

II. The CWC Is Not A “Labor Organization” Nor An “Employee” of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees’ rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that the CWC is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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

¹ Respondent’s Cicero office is located at 5637 West Roosevelt Road in Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of MVP Workforce, LLC, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

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.3 354, 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. Initially, 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> (last accessed April 20, 2015), and attached hereto as Exhibit B). 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. B). 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. Nor does Complainant identify the CWC as “dealing with” employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that some unknown individuals “supported concerted activity.” (See Charge Against Employer). Furthermore, the CWC is not identified as a “labor organization” by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC’s organization consists of “social advocacy, legal services, and job-support services,” it is not a “labor organization” 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 the CWC serve similar functions within their communities. Both 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. B with "Restaurant Opportunities Center of New York," www.rocny.org (last access April 20, 2015)). However, neither entity has a pattern or practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). The CWC, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See* Ex. B). Although the CWC has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. Therefore, to the extent that Complainant's Charge is based on her potential association with the CWC, it is clear that the CWC is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant claims arise out of Section 8(a)(1) and (3) based on the CWC's supposed status as a labor organization, those claims lack merit and must be dismissed.

III. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that presumably she, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom she alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). However, to the extent that Complainant's claims arise out of the actions on September 24, 2014 or the Temporary Restraining Order entered against the CWC, those claims are barred by the statute of limitations set forth in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (the supposed underlying concerted activity) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

IV. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

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Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First

Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against the CWC (which the CWC has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, the CWC's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. See *BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if the CWC was a labor organization (which it is not), Respondent has the right to restrict the CWC's activity on its private property. See *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seek to enjoin the CWC or any other individuals (including Complainant) from continuing its activities on public property, mere yards away from Respondent's business. Indeed, the CWC has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, are protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for either the CWC or Complainant engaging in protected concerted activity. Initially, Respondent's Complaint was not filed against Complainant, nor did Respondent mention Complainant in the Complaint. Further, the CWC is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in the CWC's activities. Neither the CWC nor Complainant had, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, the CWC's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. See *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant and the CWC have always, and continue to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited its employees' rights to self-organize or engage in protected activities, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

V. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support in order to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal.² Moreover, Complainant has not demonstrated that Respondent engaged in “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, the CWC is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiongale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int'l, Inc. v. Int'l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. However, to the extent that Complainant complains of herself, according to Respondent’s records, Complainant has not sought a job assignment from Respondent since September 2013. (See Ex. A). Respondent has no knowledge of Complainant or Complainant’s affiliations, much less any affiliation with a labor organization. Accordingly, Respondent did not discriminate against Complainant in any manner.

As Complainant has failed to allege any facts in support of her claim and the CWC is not a labor organization, Complainant’s claim must be dismissed.

VI. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant purports to assert a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of

² Respondent notes that an unfair labor practice charge may be filed by anyone. *Palisade Nursing Center*, Case No. 22-CA-28154, 2010 NWL 2180789 (2010) (citing *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB 230 (1973) for the proposition that any person can file an NLRB charge). Complainant alleges that she was “impacted” by the alleged retaliation, but does not specifically state that Respondent refused to assign her to work. Accordingly, Respondent cannot be sure if Respondent filed her Charge on behalf of herself or other unidentified individuals.

Respondent's employees authorized either her or the CWC to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir. 1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that she or the CWC is the representative of Respondent's employees, and accordingly, Respondent was under no duty to bargain collectively with Complainant or the CWC.³ For that reason, Respondent did not violate Section 8(a)(5).

VII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and her attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. She has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson /be

cc: Personnel Staffing Group, LLC

³ Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent's employees or seeking to obtain voluntary recognition by Respondent. *See Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); *see also Kobell v. United Food and Commercial Workers Int'l Union*, 788 F.2d 189, 194 (3d Cir. 1986).

Check History Report

(Includes Deposit Advices)

PSG - Personnel Staffing Group, LLC

4/21/2015 11:15:33AM

YANETHE /Yaneth Estrada Email:

Page 1 of 1

MARTINEZ, ISaura 2100 S. 47TH AVE Cicero IL 60804 Phone #: 7083052847
--

Selection Criteria:

Check dates BETWEEN 1/1/2012 AND 4/21/2015

Employee	Adds/Deds	RegHrs	OT Hrs	DT Hrs	Reg Pay	OT Pay	DT Pay	FedWith	StateWith	SocSWith	MedWith
		A/K/U	B/L/V	C/M/W	D/N/X	E/O/Y	F/P/Z	G/Q	H/R	I/S	J/T
MARTINEZ, ISaura		14.50	0.00	0.00	119.63	0.00	0.00	0.00	(2.14)	(5.02)	(1.73)
MAR26Y		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 119.63 Net: 110.74		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck.#: 11269673 9/28/2012 P#: 2246413		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MARTINEZ, ISaura		30.50	0.00	0.00	251.63	0.00	0.00	(6.41)	(8.74)	(10.57)	(3.65)
MAR26Y		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 251.63 Net: 222.26		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck.#: 11270295 10/5/2012 P#: 2254418		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MARTINEZ, ISaura		8.00	0.00	0.00	66.00	0.00	0.00	0.00	0.00	(2.77)	(0.96)
MAR26Y		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 66.00 Net: 62.27		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck.#: 11274989 10/12/2012 P#: 2262708		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MARTINEZ, ISaura		8.00	0.00	0.00	66.00	0.00	0.00	0.00	0.00	(2.78)	(0.96)
MAR26Y		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 66.00 Net: 62.26		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck.#: 11306363 11/16/2012 P#: 2302710		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MARTINEZ, ISaura		10.00	0.00	0.00	82.50	0.00	0.00	0.00	(0.28)	(3.46)	(1.20)
MAR26Y		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 82.50 Net: 77.56		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck.#: 11313646 11/23/2012 P#: 2306560		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MARTINEZ, ISaura		16.00	0.00	0.00	132.00	0.00	0.00	0.00	(2.75)	(8.18)	(1.91)
MAR26Y		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 132.00 Net: 119.16		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck.#: 11560413 9/7/2013 P#: 2675386		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
***** Company Totals		87.00	0.00	0.00	717.76	0.00	0.00	(6.41)	(13.91)	(32.78)	(10.41)
		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Total Gross: 717.76 Total Net: 654.25 Total Other Additions and Deductions: 0.00



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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Path to Citizenship should not be tied to any other issue

▶ Bill Moyers & Company Investigator Highlights Bringing Down Barriers

Change 4 Good celebrates its first official trainee to receive his barber license!

▶ Comité de Mujeres

CWC Helps Bring National Media Coverage to Temp Staffing Abuses

CWC Members And Supporters Deliver Message Loud And Clear To Temp Staffing Agencies: No More Abuse! We Want Respect, And A Voice At Work!

Forever Temp? Once a bastion of good jobs, manufacturing has gone gaga for temps.

State Representative La Shawn K. Ford commits to toughen temp agency regulations stop discrimination

The New Temp Economy



About Us

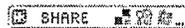
Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC has a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.



Our Partners

National Staffing Workers Alliance
Warehouse Workers for Justice
Centro de Trabajadores Unidos
Latino Union of Chicago

Our Campaigns

Campaigns
Justice at Staffing Network
The Temp Industry

Chicago Workers Collaborative
5314 S. Ashland
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Toll Free: 1-877-77-LUCHA
Toll Free: 1-877-775-9242
Chicago, Waukegan and Rolling Meadows, IL

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EXHIBIT B



KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Isaura Martinez v. MVP Workforce, LLC
Case No. 13-CA-149593**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent MVP Workforce, LLC (“MVP Workforce” and/or “Respondent”) in this matter. Please direct all correspondence, questionnaires, and information requests to my attention.

Ms. Isaura Martinez (“Complainant”) has asserted meritless claims against Respondent. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity and also filed a lawsuit against “persons and an association of persons who engaged in and supported concerted activity.” (*See* Charge Against Employer). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*). Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent’s working conditions and a job fair occurring on September 24, 2014. (*Id.*). Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act (“NLRA”).

As an initial matter, the litigation referenced by Complainant was filed against a third-party organization (the Chicago Workers’ Collaborative), which is not a labor organization, and two individuals employed by that organization. The litigation was not filed against Complainant. Moreover, the litigation was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because individuals trespassed on Respondent’s private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order and that injunctive relief remains in effect today. The Chicago Workers’ Collaborative (the “CWC”) additionally filed a motion to dismiss, which has been denied.

Further, Respondent did not hold a job fair on September 24, 2014 and Respondent did not have any part in said job fair. Complainant’s claim that she was not assigned work because of engaging in protected activity is also without merit for the reasons as will be discussed below. Finally, Complainant’s Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against the CWC because it was engaging in wrongful conduct and obtained injunctive relief that remains intact. In response, the attorney representing this organization in the state court litigation and individuals apparently associated with the CWC have now brought a slew of NLRB claims against Respondent. This is one of those claims. It is without merit and Respondent respectfully requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, a third-party organization, the CWC began an extensive campaign against Respondent and other area temporary labor service agencies, including Personnel Staffing Group, LLC (“PSG”). During that time, the CWC traveled to Respondent’s Cicero branch office location and on several occasions, blocked ingress and egress to the premises. CWC employees and supporters, who were not employed by Respondent, also illegally entered Respondent’s business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, CWC would distribute flyers, while trespassing upon Respondent’s property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the CWC, its employees and associates refused to cease trespassing upon Respondent’s premises and illegally disrupting its business operations.

On September 24, 2014, PSG held a job fair for individuals in the Chicagoland community. Neither Respondent nor its representatives were present at this job fair.

As a result of the CWC’s repeated trespasses onto Respondent’s private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against the CWC and two individuals employed by the CWC, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers’ Collaborative*, Case No. 2014 CH 16104 (the “State Court Litigation”).

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that the CWC be enjoined from trespassing into Respondent’s private business and blocking ingress and egress to and from Respondent’s office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent’s Motion for a Temporary Restraining Order. The Temporary Restraining Order provided that the CWC was “temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

¹ Respondent’s Cicero office is located at 5017 West Cermak Road, Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of PSG, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent's Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, the CWC filed a Motion to Dismiss Respondent's Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied the CWC's Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, the CWC consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

Respondent has no records of Complainant, and does not have any record that Complainant ever applied for work with Respondent. Respondent has no knowledge of any kind about Complainant, including whether or not Complainant participated in any organized activity with the CWC, or whether Complainant is a member of the CWC.

II. Respondent Is Not A "Single Employer" With Personnel Staffing Group, LLC

Respondent cannot be held liable for any acts or omissions of PSG. Although Complainant has filed the present Charge Against Employer against both PSG and Respondent, Complainant alleges no facts supporting its proposition that Respondent is a single employer with PSG. Respondent and PSG are two separate legal entities. *See Esmark, Inc. v. NLRB*, 887 F.2d 739, 753 (7th Cir. 1989). Based on the standard set forth in previous NLRB decisions, Respondent and PSG are not a single employer, and Complainant's Charge must be dismissed.

III. The CWC Is Not A "Labor Organization" Nor An "Employee" of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees' rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that the CWC is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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.3 354, 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. Initially, 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> (last accessed April 20, 2015), and attached hereto as Exhibit A). 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. A). 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. Nor does Complainant identify the CWC as "dealing with" employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that some unknown individuals "supported concerted activity." (*See Charge Against Employer*). Furthermore, the CWC is not identified as a "labor organization" by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC's organization consists of "social advocacy, legal services, and job-support services," it is not a "labor organization" 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 the CWC serve similar functions within their communities. Both 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. A with "Restaurant Opportunities Center of New York," www.rocny.org (last access April 20, 2015)). However, neither entity has a pattern or practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). The CWC, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See* Ex. A). Although the CWC has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. Therefore, to the extent that Complainant's Charge is based on her potential association with the CWC, it is clear that the CWC is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant's claims arise out of Section 8(a)(1) and (3) based on the CWC's supposed status as a labor organization, those claims lack merit and must be dismissed.

IV. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that presumably she, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom she alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). As noted above, Respondent had no involvement in the September 24, 2014 job fair. Regardless, these claims are barred by the statute of limitations in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (although Respondent had no part in the job fair) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts

complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

V. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its suit in the Circuit Court of Cook County, Illinois against the CWC and two individuals who are not employees of Respondent. None of Respondent's employees are named in the suit. Complainant is not named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent's employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by the CWC. On October 7, 2014, Respondent filed its Complaint and an Emergency Motion for a Temporary Restraining Order. Respondent's Motion for a Temporary Restraining Order requested only that the CWC be prohibited from blocking ingress and egress to Respondent's office and from entering the private premises of Respondent's office. After both notice and a hearing (during which time the CWC's counsel (who also represents Complainant) was present), the Honorable Judge Larsen entered a Temporary Restraining Order.

The CWC subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While the CWC's Motion to Dismiss was pending, the CWC voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against the CWC (which the CWC has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, the CWC's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. See *BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if the CWC was a labor organization, Respondent has the right to restrict the CWC's activity on its private property. See *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seek to enjoin the CWC or any other individuals (including Complainant) from continuing its activities on public property, mere yards away from Respondent's business. Indeed, the CWC has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, are protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for either the CWC or Complainant engaging in protected concerted activity. Initially, Respondent's Complaint was not filed against Complainant, nor did Respondent mention Complainant in the Complaint. Further, the CWC is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in the CWC's activities. Neither the CWC nor Complainant had, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, the CWC's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. See *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant and the CWC have always, and continue to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited, in any manner, its employees' rights to self-organize or engage in protected concerted activity, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

VI. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support in order to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal.² Moreover, Complainant has not demonstrated that Respondent engaged in “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, the CWC is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiungale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int’l, Inc. v. Int’l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. Respondent states that it was not present during the September 24, 2014 job fair, and thus, did not refuse employment to any individual for actions arising out of said job fair. Moreover, Respondent has no records of Complainant ever applying for work with Respondent.

As Complainant has failed to allege any facts in support of her claim and the CWC is not a labor organization, Complainant’s claim must be dismissed.

VII. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant purports to assert a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of Respondent’s employees authorized either her or the CWC to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir.

² Respondent notes that an unfair labor practice charge may be filed by anyone. *Palisade Nursing Center*, Case No. 22-CA-28154, 2010 NWL 2180789 (2010) (citing *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB 230 (1973) for the proposition that any person can file an NLRB charge). Complainant alleges that she was “impacted” by the alleged retaliation, but does not specifically state that Respondent refused to assign her to work. Accordingly, Respondent cannot be sure if Respondent filed her Charge on behalf of herself or other unidentified individuals.

1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that she or the CWC is the representative of Respondent's employees, and accordingly, Respondent was under no duty to bargain collectively with Complainant or the CWC.³ For that reason, Respondent did not violate Section 8(a)(5).

VIII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and her attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. She has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson /~~102~~

cc: MVP Workforce, LLC

³ Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent's employees or seeking to obtain voluntary recognition by Respondent. See *Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); see also *Kobell v. United Food and Commercial Workers Int'l Union*, 788 F.2d 189, 194 (3d Cir. 1986).



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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About Us

Submitted on Tue, 10/22/2013 - 21:02

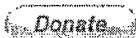
Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 that promotes full employment and equality for the lowest wage-earners, primarily temp staffing workers, in the Chicago region through leadership and skills training, critical assistance and services, advocacy and collaborative action. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC has a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.

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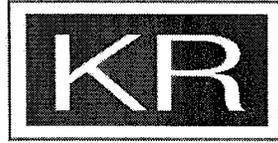
Our Campaigns

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EXHIBIT A



KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Marcela Gallegos v. Personnel Staffing Group, LLC
Case No. 13-CA-149594**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent Personnel Staffing Group, LLC d/b/a Most Valuable Personnel (“PSG” and/or “Respondent”) in this matter. Please direct all correspondence, questionnaires, and information requests to my attention.

Ms. Marcela Gallegos (“Complainant”) has asserted meritless claims against Respondent. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity and also filed a lawsuit against “persons and an association of persons who engaged in and supported concerted activity.” (*See Charge Against Employer*). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*). Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent’s working conditions and a job fair occurring on September 24, 2014. (*Id.*). Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act (“NLRA”).

As an initial matter, the litigation referenced by Complainant was filed against a third-party organization (the Chicago Workers’ Collaborative), which is not a labor organization, and two individuals employed by that organization. The litigation was not filed against Complainant. Moreover, the litigation was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because individuals trespassed on Respondent’s private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order and that injunctive relief remains in effect today. The Chicago Workers’ Collaborative (the “CWC”) additionally filed a motion to dismiss, which has been denied.

Complainant’s claim that she was not assigned work because of engaging in protected activity is also without merit for the reasons as will be discussed below. Finally, Complainant’s Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against the CWC because it was engaging in wrongful conduct and obtained injunctive relief that remains intact. In response, the attorney representing this organization in the state court litigation and individuals apparently associated with the CWC have now brought a slew of NLRB claims against Respondent. This is one of those claims. It is without merit and Respondent respectfully requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, a third-party organization, the CWC began an extensive campaign against Respondent and other area temporary labor service agencies. During that time, the CWC traveled to Respondent's Cicero branch office location and on several occasions, blocked ingress and egress to the premises. CWC employees and supporters, who were not employed by Respondent, also illegally entered Respondent's business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, CWC would distribute flyers, while trespassing upon Respondent's property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the CWC, its employees and associates refused to cease trespassing upon Respondent's premises and illegally disrupting its business operations.

On September 24, 2014, Respondent held a job fair for individuals in the Chicagoland community to fill out applications and to ask questions regarding Respondent's business. This job fair occurred on Respondent's property. During the job fair, four unknown individuals employed by the CWC stopped individuals from attending the community job fair by blocking access to the job fair and telling potential applicants that Respondent stole employees' wages, discriminated against employees, and refused to send injured employees to approved medical facilities. If an individual did fill out an application at the job fair, the CWC's employees would again stop the applicants in an effort to persuade them from working for Respondent.

The CWC then sent individuals into Respondent's business to apply for work, but when called for an assignment, refused to work for Respondent, stating they were "not interested." CWC employees also came inside Respondent's office, harassed its employees and interfered with its prospective economic relationships. As a result of the CWC's repeated trespasses onto Respondent's private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against the CWC and two individuals employed by the CWC, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers' Collaborative*, Case No. 2014 CH 16104 (the "State Court Litigation").

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that the CWC be enjoined from trespassing into Respondent's private business and blocking ingress and egress to and from Respondent's office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent's Motion for a Temporary Restraining

Order. The Temporary Restraining Order provided that the CWC was “temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent’s Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, the CWC filed a Motion to Dismiss Respondent’s Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied the CWC’s Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, the CWC consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

Regarding Complainant, Complainant filled out an application for employment with Respondent on September 24, 2014. (A copy of Complainant’s Application is attached hereto as Exhibit A). However, when Respondent called to offer Complainant a job assignment, she turned down the assignment. (*See* Affidavits of Monica Hernandez and Ilse Bahena, attached hereto as Exhibits B and C respectively).

II. The CWC Is Not A “Labor Organization” Nor An “Employee” of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees’ rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that the CWC is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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

¹ Respondent’s Cicero office is located at 5637 West Roosevelt Road in Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of MVP Workforce, LLC, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

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. Initially, 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> (last accessed April 20, 2015), and attached hereto as Exhibit D). 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. D). 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. Nor does Complainant identify the CWC as “dealing with” employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that some unknown individuals “supported concerted activity.” (See Charge Against Employer). Furthermore, the CWC is not identified as a “labor organization” by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC’s organization consists of “social advocacy, legal services, and job-support services,” it is not a “labor organization” 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 the CWC serve similar functions within their communities. Both 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. D with "Restaurant Opportunities Center of New York," www.rocny.org (last access April 20, 2015)). However, neither entity has a pattern or practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). The CWC, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See* Ex. D). Although the CWC has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. Therefore, to the extent that Complainant's Charge is based on her potential association with the CWC, it is clear that the CWC is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant claims arise out of Section 8(a)(1) and (3) based on the CWC's supposed status as a labor organization, those claims lack merit and must be dismissed.

III. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that presumably she, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom she alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). However, to the extent that Complainant's claims arise out of the actions on September 24, 2014 or the Temporary Restraining Order entered against the CWC, those claims are barred by the statute of limitations set forth in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (the supposed underlying concerted activity) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

IV. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its suit in the Circuit Court of Cook County, Illinois against the CWC and two individuals who are not employees of Respondent. None of Respondent's employees are named in the suit. Complainant is not named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent's employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by the CWC. On October 7, 2014, Respondent filed its Complaint and an Emergency Motion for a Temporary Restraining Order. Respondent's Motion for a Temporary Restraining Order requested only that the CWC be prohibited from blocking ingress and egress to Respondent's office and from entering the private premises of Respondent's office. After both notice and a hearing (during which time the CWC's counsel (who also represents Complainant) was present), the Honorable Judge Larsen entered a Temporary Restraining Order.

The CWC subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While the CWC's Motion to Dismiss was pending, the CWC voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First

Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against the CWC (which the CWC has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, the CWC's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. See *BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if the CWC was a labor organization (which it is not), Respondent has the right to restrict the CWC's activity on its private property. See *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seek to enjoin the CWC or any other individuals (including Complainant) from continuing its activities on public property, mere yards away from Respondent's business. Indeed, the CWC has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, are protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for either the CWC or Complainant engaging in protected concerted activity. Initially, Respondent's Complaint was not filed against Complainant, nor did Respondent mention Complainant in the Complaint. Further, the CWC is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in the CWC's activities. Neither the CWC nor Complainant had, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, the CWC's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. See *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant and the CWC have always, and continue to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited its employees' rights to self-organize or engage in protected activities, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

V. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support in order to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal.² Moreover, Complainant has not demonstrated that Respondent engaged in “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, the CWC is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiogale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int’l, Inc. v. Int’l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. However, to the extent that Complainant complains of herself, according to Respondent’s records, Complainant applied for, and was offered, a job assignment on or about September 24, 2014. Complainant refused that job assignment. (See Ex. A; Ex. B; Ex. C). As noted herein, the CWC is not a labor organization, but regardless of her affiliation with that entity, Respondent did offer Complainant a job assignment. Accordingly, Respondent did not discriminate against Complainant in any manner.

As Complainant has failed to allege any facts in support of her claim and the CWC is not a labor organization, Complainant’s claim must be dismissed.

VI. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant purports to assert a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB.

² Respondent notes that an unfair labor practice charge may be filed by anyone. *Palisade Nursing Center*, Case No. 22-CA-28154, 2010 NWL 2180789 (2010) (citing *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB 230 (1973) for the proposition that any person can file an NLRB charge). Complainant alleges that she was “impacted” by the alleged retaliation, but does not specifically state that Respondent refused to assign her to work. Accordingly, Respondent cannot be sure if Respondent filed her Charge on behalf of herself or other unidentified individuals.

Moreover, Complainant has never provided Respondent with any evidence that a majority of Respondent's employees authorized either her or the CWC to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir. 1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that she or the CWC is the representative of Respondent's employees, and accordingly, Respondent was under no duty to bargain collectively with Complainant or the CWC.³ For that reason, Respondent did not violate Section 8(a)(5).

VII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and her attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. She has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson /b t

cc: Personnel Staffing Group, LLC

³ Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent's employees or seeking to obtain voluntary recognition by Respondent. See *Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); see also *Kobell v. United Food and Commercial Workers Int'l Union*, 788 F.2d 189, 194 (3d Cir. 1986).



Most Valuable Personnel
 a Division of Personnel Staffing Group, LLC

EMPLOYMENT APPLICATION/SPANISH

Call

*1st shift only
 only 8 hr work*

Last Name: Gallegos First Name: Marcela
 Apellido Nombre

Address: 4131 W 24th
 Dirección
 City: Chicago State: IL Zip Code: 60623
 Ciudad Estado Código Postal

Phone Number: 708-691-6666 Alternate Number: _____
 Teléfono Otro Teléfono

Social Security Number: [REDACTED] Are you over 18? Si
 Número de Seguro ¿Es usted mayor de 18 años?

What shift/hours are you available to work? Primer turno
 ¿Que turno/horario usted esta buscando para trabajar?

Previous Employment: Trabajo anterior

Company Name: Great Kitchen
 Nombre de la compañía

Address: 300 Innovation Romeville
 Dirección

Phone Number: _____ Supervisor's Name: Alberto Cordero
 Teléfono Nombre del supervisor

May we contact your previous employer? Si Start Date: 05-01-2012 End Date: 11-22-2013
 Podemos contactar a su empleador anterior Fecha de comienzo Fecha en que termino

Job Duties: Ensamblar, Produccion trabajo de linea
 Funciones de trabajo

Company Name: _____
 Nombre de la compañía

Address: _____
 Dirección

Phone Number: _____ Supervisor's Name: _____
 Teléfono Nombre del supervisor

May we contact your previous employer? _____ Start Date: _____ End Date: _____
 Podemos contactar a su empleador anterior Fecha de comienzo Fecha en que termino

Job Duties: _____
 Funciones de trabajo

Do you have your own transportation to/from work? _____
 ¿Tiene usted su propia transportación para ir/venir del trabajo?

I agree to conform to the rules and regulations of Most Valuable Personnel, hereinafter referred to as MVP, and understand that my employment may be terminated for any cause at any time. If injured during work I am to report accidents to MVP. Work-related injuries or illness are subject to be tested for the presence of drugs and/or alcohol. Refusal to be tested will be reason for dismissal. I understand that I am applying for temporary work assignments with MVP, and MVP is the "employer of record". I authorize MVP to verify my information for employment. I authorize MVP to check my information for any criminal activity. I authorize MVP to administer a drug screen prior to employment. I have read and understand this application and the above statements.

Yo estoy de acuerdo en ajustarme a las reglas y regulaciones de Most Valuable Personnel, que se referirá en todo el contexto como MVP, y entiendo que mi empleo puede terminar por cualquier causa. Si me lastime durante horas de trabajo debo de reportar cualquier accidente a MVP. Accidentes o enfermedades relacionados con el trabajo son sujetos a ser examinados para detectar la presencia de drogas y/o alcohol. Yo entiendo que estoy aplicando para una asignación de trabajo temporal con MVP, y MVP es el empleador del registro. Yo autorizo a MVP a verificar mi información para empleo, verificar mi información por alguna actividad criminal, y a administrar una prueba de drogas antes de emplearme si es necesario. Yo lei y entiendo esta aplicación y las declaraciones mencionadas arriba.

Employee Signature: Marcela Gallegos Date: 7-24-2014
 Firma del empleado Fecha

Can you speak or read English? NO
¿Hablas o lees Ingles?

How fluently? _____
¿Cuanto por ciento (ejemplo 20%, 60%, 100%)?

Skill Evaluation, please mark an "X" at your skills

Evaluación de experiencia, ponga una "X" en lo que tiene de experiencia

Warehouse

- Assembly (Ensamblar)
- Book Bindery (Ensamblando Libros/Carpetas)
- Inventory (Inventario)
- Picking (Seleccionador)
- Packing (Empacador)
- Shipping/Receiving (Recibiendo/Mandando Ordenes)
- Forklift, please specify (Maquina de Monte Carga)
 - Stand-Up
 - Sit Down
 - Cherry Picker
 - Slip Sheet
 - Clamp
 - Turret

Forklift Certified? ___ Yes ___ No
¿Tienes licencia de monte carga? ___ Si ___ No

Manufacturing

- Machine Operator (Operador de Maquina)
- Specify Type(s) _____
- Que Tipo(s) _____
- Punch Press (Maquina de Presión)
- Set-Up Experience (Armar/Montar o Programar Maquinas)

Clerical

- Receptionist (Recepcionista)
- Secretarial (Secretaría)
- Data Entry (Entrada de Datos)
- Customer Service (Servicio al Cliente)
- Typing (Teclado) Speed (PPM) _____
- Computer Skills (Computación)
- Specify Software _____
- Que Tipo de Programas _____

Food Service:

- Cook (Cocinar)
- Dish Washer (Lavaplatos)
- Server (Servidor)

House keeping/Cleaning

- Office (Oficinas)
- Hotel (Hoteles)
- Janitorial (Limpieza)

Electronics

- Soldering (Soldar Cautín)
- Read Schematics (Leer Esquemático Electrónico)
- Wiring Assembly (Ensamblar Cables Electrónico o Alambres)
- Blue Print Reading (Leer Planos)

Other Skills

- Carpentry (Carpintero)
- Cashier (Cajero)
- Driver (Conductor)
- Type of Driver's License (Que clase de licencia)
- Security Guard (Guardia de Seguridad)
- Sewing (Maquina de Coser)
- Welding (Soldador con Arco Eléctrico o con Soplete)
- Mechanic, Automobile (Mecánico)
- Maintenance, Building (Mantenimiento)
- Lifting Capabilities _____
- Capacidad para levantar _____

PÓLIZAS Y PROCEDIMIENTOS

1. Todos los empleados son responsables de aprender y cumplir con todas las regulaciones de seguridad y salud que sean aplicables a su trabajo.
2. Todos los empleados tienen que usar equipo de protección cuando sea requerido.
3. Los empleados expuestos a partículas en el aire o pequeños objetos que puedan tener contacto con sus ojos deberán usar lentes de seguridad.
4. Los empleados deberán estar presentables con ropa limpia y apropiada. No se permitirán pantaloncillos cortos, playeras sin manga, ropa provocativa o con contenido ofensivo.
5. Empleados no podrán usar joyería en ningún lugar de trabajo asignado, solo la argolla matrimonial será permitida.
6. Los empleados se reportaran con los despachadores a la hora programada, trabajar las horas estipuladas por la Compañía a la que sean asignados y estar puntuales.
7. Los empleados que abandonen el lugar de trabajo asignado sin una previa autorización, serán sujetos a una llamada de atención por escrito en su primera falta, en su segunda falta serán despedidos.
8. El juego de manos, pelear y otros actos de compartimiento inseguro están prohibidos.
9. Los empleados no deberán insubordinarse a ningún empleado o supervisor que les a sido asignado. Cualquier conflicto o situación con su supervisor deberá reportarse a su empleador inmediatamente.
10. Empleados deberán reportar cualquier acto potencial de inseguridad o peligro potencial.
11. Protección respiratoria adecuada es necesaria cuando se trabaje con solventes, pinturas, químicos o polvo que pueda causar irritación nasal o ocular. Revisar la hoja de MSD (Información de Seguridad de determinados Materiales).
12. Solo personal calificado y entrenado deberá operar equipo y maquinaria. Si se le asigna un trabajo fuera de su capacidad laboral que requiera un entrenamiento específico y calificado deberá notificarlo a su supervisor para que le sea asignada otra actividad.
13. Los empleados deberán reportar inmediatamente cualquier accidente o incidente que ocurra en el trabajo por menor que les parezca, incluyendo lesiones menores que requieran solo primeros auxilios.
14. Cualquier empleado bajo la influencia de drogas o alcohol no será autorizado a trabajar y esta sujeto al despido inmediato.
15. Cualquier cambio que el cliente realice en el lugar de trabajo que sea diferente de lo estipulado por el despachador como cambio en el pago, deberá ser notificado y aprobado por la administración de despacho.
16. Los empleados recogerán sus cheques nominales en persona. No enviarán amigos o familiares. Una identificación es requerida.
17. Los empleados no pueden portar ningún teléfono celular personal mientras permanezcan instalaciones que sean propiedad de nuestros clientes, tampoco realizar llamadas personales o recibir visitas personales mientras estén trabajando en cualquier Compañía asignada.

Nombre del Empleado Marcela Gallegos Fecha 09-24-2014

Firma del Empleado Marcela G

FORMA DE CONSENTIMIENTO Y LIBERACION EN EL USO DE DROGAS Y ALCOHOL

Para proteger la salud y seguridad de todos nuestros empleados, Most Valuable Personnel, hace cumplir las políticas sobre uso de alcohol y drogas las cuales prohíben la posesión, venta, uso o estar bajo la influencia de alcohol o drogas durante el tiempo que este en la compañía, excepto en drogas prescritas. La violación de estas políticas podría ocasionar su despido inmediato del trabajo.

1. Yo entiendo que al estar empleado por Most Valuable Personnel que puedo estar sujeto a una prueba de drogas o alcohol en el momento en el que yo sea contratado y llegar a verme involucrado en algún accidente de trabajo que requiera atención médica.
2. Yo entiendo que como empleado de Most Valuable Personnel puedo ser requerido para que se me lleve a cabo una prueba de drogas y alcohol en el caso de verme involucrado en algún accidente relacionado con el trabajo y que puedo ser suspendido hasta que los resultados de la prueba sean conocidos.
3. Cualquier accidente que este relacionado con el trabajo y requiera atención medica serán sometidos a pruebas de drogas y alcohol. Yo entiendo que el resultado positivo de la prueba, exonera a Most Valuable Personnel y a la compañía aseguradora de cualquier responsabilidad del resultado de dicho accidente y también como resultado una posible terminación del empleo.
4. Cualquier empleado, del cual su prueba de drogas y alcohol indique la presencia de sustancias controladas a pesar de la cantidad (a menos que la prescripción sea autorizada por un medico), su contrato será terminado por mala conducta en las políticas de la compañía.
5. Algún empleado que presente cualquier nivel de alcohol en la prueba de sangre, resultados del .05% o mayores, su contrato será terminado por estar bajo la influencia de alcohol y su contrato será terminado por mala conducta dentro de las políticas de la compañía.
6. Yo esperare a que el doctor, personal del hospital o Most Valuable Personnel, este tomando las muestras que sean necesarias para las pruebas.
7. Yo entiendo que el incumplimiento o rechazo para cooperar con cualquier procedimiento prescrito por cualquier razón, constituye mala conducta en las políticas de Most Valuable Personnel, y esto permitirá la inmediata terminación de mi empleo.

Yo entiendo que la sumisión a la prueba de drogas y alcohol de acuerdo con lo establecido políticamente es una condición de empleo con Most Valuable Personnel, y yo autorizo a proporcionar sangre u orina para realizar la prueba de drogas y alcohol cuando sea requerido por Most Valuable Personnel, Yo también autorizo a conocer los resultados de esta prueba a los representantes de Most Valuable Personnel.

Nombre del Empleado Marcela Gallegos Fecha 09-24-2014

Firma del Empleado Marcela G

PÓLIZAS HOSTIGAMIENTO SEXUAL Y ILEGAL

Estamos comprometidos en proveer un ambiente de trabajo que esta libre de discriminación y de hostigamientos ilegales. Acciones, palabras, bromas o comentarios basados en el sexo, raza, origen étnico, religión o cualquier otra característica legalmente protegida no será tolerada. Hostigamiento (los dos declarado o sutil) es una forma de mala conducta de empleados que es degradante para otra persona, quita la integridad de relaciones de empleo, es estrictamente prohibido.

Cualquier empleado que quiera reportar algún incidente de hostigamiento debería reportar esta situación pronto a su "Manager". Empleados pueden levantar preocupaciones y hacer reportes sin miedo o represalia.

Cualquier "Manager" que este consiente del posible hostigamiento sexual o ilegal deberá manejar este asunto a tiempo y de manera confidencial.

Cualquier comprometido en hostigamiento será sujeto a una acción disciplinaria, hasta puede incluir la terminación del empleo.

Nombre del Empleado Marcela Gallegos Fecha 9-24-2014

Firma del Empleado Marcela G

LIBERTAD DE ANTECEDENTES CRIMINALES

Yo, el abajo firmante, por este medio autorizo a Most Valuable Personnel a examinar cualquier y todo antecedente criminal y arrestos en archivos de los Estados Unidos de América. Al hacer eso, yo entiendo que yo estoy renunciando a mis derechos de confidencialidad referente a mi historia criminal.

Imprime nombre completo del solicitante: Marcela Gallegos

Numero de licencia de conducir: _____

Numero de Seguro Social: 

Dirección: 4131 W 24th

Ciudad: Chicago Estado: IL Código Postal: 60623

Fecha de liberación: (hoy) 09-24-2015

Firma: Marcela Gallegos

GUIAS DE PRÁCTICAS PARA UNA BUENA FABRICACION (GMP)

GMP's son regulaciones que son impuestas por la Administración de Comida y Medicina. El personal que esta en contacto con el producto o empaquetadura es requerido que este limpio, saludable, y vestido apropiadamente para que no sean desfavorable y afecte el producto terminado.

Nota: TODOS LOS EMPLEADOS TENDRAN SU IDENTIFICACION DE MVP (I.D.) CON ELLOS E APROPIADAMENTE VISIBLE DURANTE SU TURNO DE TRABAJO.

1. Ropa apropiada para el ambiente de procesamiento de comida;
 - A. Pantalones largos.
 - B. Faldas hasta las rodillas con medias.
 - C. Blusas/camisas, deben tener media manga (camisas sin manga o playeras), libres de brillo, adornos, etc.
 - D. Calcetas deben ser usadas todo el tiempo con zapatos cerrados. (zapatos de tacón, zapatos abiertos, o sandalias son prohibidos)
 - E. Ropa que no tenga imágenes o mensajes ofensivos.
2. Lavarse las manos antes de empezar a trabajar y después de que vaya al baño, cafetería y cuarto de armarios.
3. No trabajes con productos cuando tengas una cortada o tus manos estén infectadas; si tiene un curita, debe usar guantes de plástico.
4. Estar limpio/afeitado; una malla tiene que ser usada si sus patillas extienden abajo de su oído y cuando su bigote se extienda abajo de las orillas de su labio superior; debe tener buena higiene todo el tiempo.
5. La compañía les provee mallas para el cabello los cuales deben ser usados todo el tiempo para asegurarse que todo el cabello este cubierto.
6. Mantén tus uñas cortas y limpias todo el tiempo. Pestañas postizas, uñas postizas, y barniz SON ESTRICTAMENTE PROHIBIDOS.
7. Mantenga sus manos alejados de tu boca, nariz, oídos, cuero cabelludo.
8. Dulces, mascar chicle, tabaco, cigarro, etc. no son permitidos. (incluyendo las bodegas y refrigeradores) no esta permitido.
9. Joyería no pueden ser usados (reloj, aretes, broches, etc.) Perforaciones en el cuerpo como en la lengua, cejas, nariz, labios, etc., son estrictamente prohibidos.
10. Plumaz, lápices, lentes, etc. no pueden ser sujetados en las playeras o cargados en los bolsillos arriba de la cintura.
11. Brochas, raspadores, o cualquier otro implemento que sean usados con/o que vengan en contacto con comida no pueden ser cargados en los bolsillos, ni pueden ser puestos en lugares que sean antihigiénico, tal y como repisas, escaleras, estante, etc.
12. Mantén todos los utensilios limpios y en buena condición. Estos artículos no deben ser puestos en el piso o en los lugares que no estén limpios.
13. No pongan cables de electricidad, herramienta, partes de equipo, etc. en zonas de producción o en el piso.
14. No camines, te pares o te sientes en zonas que estén en contacto con el producto o envase con ingredientes, incluyendo días sin producción.
15. Materiales para empacar deben ser tratados como si fueran ingredientes.
16. Los almuerzos no deben ser traídos al área de producción.
17. No limpiar pisos o uniformes con mangueras de aire. Solo pistolas de soplar autorizadas pueden ser usadas para limpiar equipo específico y el operador debe ponerse lentes de seguridad aprobados y limpiar el área de la gente que no se pone protección.
18. Evite hacer un regadero cuando trates con ingredientes, si algo se tira, limpia el área inmediatamente, mientras el tiempo lo permita, mantén las áreas de trabajo limpias, organizadas, y arregladas.
19. No uses envases de ingredientes para agarrar gotas de otros trastes. Los envases de ingredientes no deben ser usados para nada más que para mantener ingredientes.
20. Mantener todas las puertas cerradas cuando no las estás usando. No sostengan las puertas abiertas.
21. Cualquier evidencia de moscas, cucarachas, pájaros, o ratones deben ser reportados inmediatamente.
22. La lubricación de maquinaria no debe ser excesiva para evitar que pueda entrar o que caiga en la zona de producción, debes de limpiar después de engrasar la maquina.
23. Reporta pintura suelta inmediatamente, moho, gotera de aceite, y condensación sobre áreas de producción.
24. Los sartenes deben ser puestos en su lugar todo el tiempo para facilitar la limpieza al final de el turno para asegurarse que el área de producción este limpia.
25. Cualquier tipo de vidrio es prohibido en el área de producción.

Entiendo y cumpliré con las políticas de MVP. Entiendo que fallar podrá ser el resultado de ser despedido inmediatamente.

Nombre del Empleado Marcela Gallegos Fecha 09-24-2014

Firma del Empleado Marcela G.

INFORMAR LAS LESIONES RELACIONADAS CON EL TRABAJO E INCIDENTES.

PROPOSITO: Para asegurar el pronto informe de todas las lesiones relacionadas con el trabajo e incidentes que ocurran durante el ciclo de MVP o durante el servicio del empleado que este trabajando para MVP Staffing.

PROCEDIMIENTO: cuando se lesiona en el trabajo o cuando tiene conocimiento de una lesión de trabajo o incidente es mandatorio que la lesión/ o incidente sea reportado **inmediatamente** a un Representante de MVP. La lesión/o incidente debe ser reportada en persona, lo más pronto posible.

Cualquier empleado que no reporte la lesión relacionada con el trabajo o incidente a un Representante de MVP será sujeto a una suspensión sin pago por tres días consecutivos en días laborales. Adicionalmente, cualquier empleado de MVP que sea testigo o que sepa de alguna lesión/ o incidente de otro empleado de MVP y no lo reporte inmediatamente será sujeto también a una suspensión sin pago por tres días consecutivos en días laborales.

Por favor de firmar este documento para indicar que usted entendió esta póliza.

Nombre del Empleado Marcela Gallagos Fecha 09-24-2014

Firma del Empleado Marcela G

CERTIFICACIÓN DE APLICACIÓN

Entiendo que mi empleo puede depender de los resultados de una investigación a fondo. Estoy enterado cualquier omisión, la falsificación, la aserción errónea o tergiversación podrían llevar a la base para mi descalificación como un solicitante o mi despido de Most Valuable Personnel, que se referirá en todo el contexto como MVP.

Estoy enterado que cualquier y todos los documentos o la información (inclusive esta aplicación) se sometió a MVP puede ser susceptible a la Ley de Archivos públicos a excepción de cierta información personal, que puede ser examinado bajo la ley del estado.

Entiendo aun más que puedo ser requerido a tomar un examen de droga durante cualquier momento mientras dure mi empleo con MVP.

Entiendo que el uso de alcohol por un empleado es prohibido durante el trabajo o mientras en el local, con pago o sin pago, en cualquier área del trabajo dentro de MVP o cualquier cliente de MVP.

Entiendo que el uso de la posesión de drogas ilegales por empleados es prohibido a cualquier hora, adentro o fuera del trabajo.

Entiendo que empleados son requeridos a notificar su supervisor inmediato antes de o en el comienzo de su turno si ellos toman alguna prescripción médica, o otra medicina, que pueda dañar sus responsabilidades normales del trabajo.

Entiendo que mi empleo este sujeto a los resultados de exámenes médicos o psicológicos, puede ser requerido a tomar durante el periodo de mi empleo.

Entiendo y estoy de acuerdo que mi aceptación para el empleo no ofrece ni garantiza ningún derecho propietario para el empleo continuo.

Estoy de acuerdo y cumplir con las reglas, las regulaciones y las ordenes establecidas por MVP hacer mención de esas reglas; las regulaciones y las ordenes pueden ser cambiadas, pueden ser interpretadas, pueden ser retiradas o pueden ser añadidas por MVP en su discreción, en tiempo y sin cualquiera previo aviso a mi persona.

Nombre del Empleado Marcela Gallegos Fecha 09-24-2014

Firma del Empleado Marcela G.

CONTACTAR A MVP DESPUES DE FINALIZAR EL TRABAJO ASIGNADO

Después de finalizar el trabajo asignado, por medio de la presente el Empleado esta de acuerdo en mantenerse en ~~contacto~~ con MVP (por lo menos una vez a la semana) para poder notificarle a MVP si es que esta disponible para empezar o tomar una nueva asignación de trabajo.

Los Empleados que fallen en mantenerse en constante contacto con MVP (por lo menos una vez a la semana) después de finalizar el trabajo asignado, pueden como resultado enfrentar la suspensión de los beneficios de desempleo, si tienen alguno, por el Illinois Department of Employment Security.

Firmando este documento, el Empleado declara que el o ella han leído y entendido completamente esta póliza.

Nombre de Empleado: Marcela Gallegos

Firma de Empleado: Marcela Gallegos

Fecha: 09-24-2014

NATIONAL LABOR RELATIONS BOARD

MARCELA GALLEGOS,)
)
 Complainant,)
)
 v.) Case No. 13-CA-149594
)
 PERSONNEL STAFFING GROUP, LLC,)
)
 Respondent.)

AFFIDAVIT OF MONICA HERNANDEZ

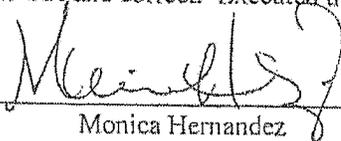
I, MONICA HERNANDEZ, being first duly sworn upon oath, do depose and state as follows:

1. I have personal knowledge of the facts stated herein and if called to testify in this matter, I could competently testify as to all of the facts set forth in this Affidavit.
2. At all relevant times, I have been employed as a dispatcher for Personnel Staffing Group, LLC d/b/a Most Valuable Personnel ("PSG") at its Cicero office branch location.
3. I have knowledge of, and was present during, the community job fair put on by PSG on September 24, 2014.
4. On several occasions in the months and days before the job fair, groups of individuals protested against PSG both on the public sidewalk outside PSG's office. Some of these individuals also entered PSG's office and disrupted business operations.
5. During the job fair, a couple individuals whom I had previously seen protesting applied for employment with PSG.
6. One of those individuals was Marcela Gallegos.
7. On both September 24, 2014 and September 25, 2014, we had open job orders and both myself and two other dispatchers, Lucia Campos and Ilse Bahena, called all of the individuals who had applied for work during the job fair, including Marcela Gallegos.
8. When we called the individuals who had been protesting, they turned down the job assignments we offered, stating that they were either not interested or had only filled out the application, but did not want to work.
9. Other individuals did not answer their phones when called.

10. To the best of my recollection, Marcela Gallegos was one of the individuals who turned down the job assignment offered.

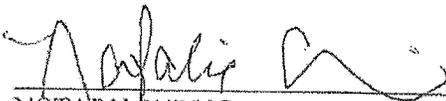
11. When we called the individuals on September 24, 2014 and September 25, 2014, we put a star on the front of their application to indicate that we called them and offered them a job assignment.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24 day of April, 2015.



Monica Hernandez

SUBSCRIBED AND SWORN to before me
this 24 day of ~~February~~ April, 2015.



NOTARY PUBLIC



NATIONAL LABOR RELATIONS BOARD

MARCELA GALLEGOS,)
)
 Complainant,)
)
 v.) Case No. 13-CA-149594
)
 PERSONNEL STAFFING GROUP, LLC,)
)
 Respondent.)

AFFIDAVIT OF ILSE BAHENA

I, ILSE BAHENA, being first duly sworn upon oath, do depose and state as follows:

1. I have personal knowledge of the facts stated herein and if called to testify in this matter, I could competently testify as to all of the facts set forth in this Affidavit.
2. At all relevant times, I have been employed as a dispatcher for Personnel Staffing Group, LLC d/b/a Most Valuable Personnel ("PSG") at its Cicero office branch location.
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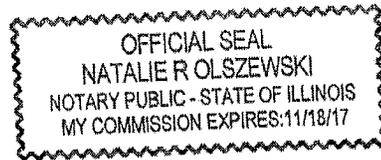
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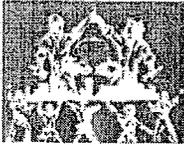
I declare under penalty of perjury that the foregoing is true and correct. Executed this 24 day of April, 2015.

Ilse Bahena
Ilse Bahena

SUBSCRIBED AND SWORN to before me
this 24 day of ~~February~~, 2015.
April

Natalie R. Olszewski
NOTARY PUBLIC





Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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About Us

Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC have a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.

SHARE

Our Partners

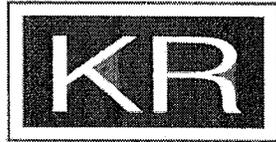
[National Staffing Workers Alliance](#)
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[Latino Union of Chicago](#)

Our Campaigns

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[Justice at Staffing Network](#)
[The Temp Industry](#)

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KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Marcela Gallegos v. MVP Workforce, LLC
Case No. 13-CA-149594**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent MVP Workforce, LLC (“MVP Workforce” and/or “Respondent”) in this matter. Please direct all correspondence, questionnaires, and information requests to my attention.

Ms. Marcela Gallegos (“Complainant”) has asserted meritless claims against Respondent. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity and also filed a lawsuit against “persons and an association of persons who engaged in and supported concerted activity.” (*See Charge Against Employer*). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*). Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent’s working conditions and a job fair occurring on September 24, 2014. (*Id.*). Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act (“NLRA”).

As an initial matter, the litigation referenced by Complainant was filed against a third-party organization (the Chicago Workers’ Collaborative), which is not a labor organization, and two individuals employed by that organization. The litigation was not filed against Complainant. Moreover, the litigation was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because individuals trespassed on Respondent’s private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order and that injunctive relief remains in effect today. The Chicago Workers’ Collaborative (the “CWC”) additionally filed a motion to dismiss, which has been denied.

Further, Respondent did not hold a job fair on September 24, 2014 and Respondent did not have any part in said job fair. Complainant’s claim that she was not assigned work because of engaging in protected activity is also without merit for the reasons as will be discussed below. Finally, Complainant’s Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against the CWC because it was engaging in wrongful conduct and obtained injunctive relief that remains intact. In response, the attorney representing this organization in the state court litigation and individuals apparently associated with the CWC have now brought a slew of NLRB claims against Respondent. This is one of those claims. It is without merit and Respondent respectfully requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, a third-party organization, the CWC began an extensive campaign against Respondent and other area temporary labor service agencies, including Personnel Staffing Group, LLC (“PSG”). During that time, the CWC traveled to Respondent’s Cicero branch office location and on several occasions, blocked ingress and egress to the premises. CWC employees and supporters, who were not employed by Respondent, also illegally entered Respondent’s business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, CWC would distribute flyers, while trespassing upon Respondent’s property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the CWC, its employees and associates refused to cease trespassing upon Respondent’s premises and illegally disrupting its business operations.

On September 24, 2014, PSG held a job fair for individuals in the Chicagoland community. Neither Respondent nor its representatives were present at this job fair.

As a result of the CWC’s repeated trespasses onto Respondent’s private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against the CWC and two individuals employed by the CWC, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers’ Collaborative*, Case No. 2014 CH 16104 (the “State Court Litigation”).

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that the CWC be enjoined from trespassing into Respondent’s private business and blocking ingress and egress to and from Respondent’s office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent’s Motion for a Temporary Restraining Order. The Temporary Restraining Order provided that the CWC was “temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

¹ Respondent’s Cicero office is located at 5017 West Cermak Road, Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of PSG, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent's Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, the CWC filed a Motion to Dismiss Respondent's Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied the CWC's Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, the CWC consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

Respondent has no records of Complainant, and does not have any record that Complainant ever applied for work with Respondent. Respondent has no knowledge of any kind about Complainant, including whether or not Complainant participated in any organized activity with the CWC, or whether Complainant is a member of the CWC.

II. Respondent Is Not A "Single Employer" With Personnel Staffing Group, LLC

Respondent cannot be held liable for any acts or omissions of PSG. Although Complainant has filed the present Charge Against Employer against both PSG and Respondent, Complainant alleges no facts supporting its proposition that Respondent is a single employer with PSG. Respondent and PSG are two separate legal entities. *See Esmark, Inc. v. NLRB*, 887 F.2d 739, 753 (7th Cir. 1989). Based on the standard set forth in previous NLRB decisions, Respondent and PSG is not a single employer, and Complainant's Charge must be dismissed.

III. The CWC Is Not A "Labor Organization" Nor An "Employee" of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees' rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that the CWC is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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.3 354, 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. Initially, 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> (last accessed April 20, 2015), and attached hereto as Exhibit A). 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. A). 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. Nor does Complainant identify the CWC as "dealing with" employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that some unknown individuals "supported concerted activity." (See Charge Against Employer). Furthermore, the CWC is not identified as a "labor organization" by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC's organization consists of "social advocacy, legal services, and job-support services," it is not a "labor organization" 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 the CWC serve similar functions within their communities. Both 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. A with "Restaurant Opportunities Center of New York," www.rocny.org (last access April 20, 2015)). However, neither entity has a pattern or practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). The CWC, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See* Ex. A). Although the CWC has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. Therefore, to the extent that Complainant's Charge is based on her potential association with the CWC, it is clear that the CWC is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant's claims arise out of Section 8(a)(1) and (3) based on the CWC's supposed status as a labor organization, those claims lack merit and must be dismissed.

IV. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that presumably she, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*) Complainant, however, fails to identify the individuals whom she alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*) As noted above, Respondent had no involvement in the September 24, 2014 job fair. Regardless, these claims are barred by the statute of limitations in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 ((although Respondent had no part in the job fair) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts

complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

V. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its suit in the Circuit Court of Cook County, Illinois against the CWC and two individuals who are not employees of Respondent. None of Respondent's employees are named in the suit. Complainant is not named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent's employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by the CWC. On October 7, 2014, Respondent filed its Complaint and an Emergency Motion for a Temporary Restraining Order. Respondent's Motion for a Temporary Restraining Order requested only that the CWC be prohibited from blocking ingress and egress to Respondent's office and from entering the private premises of Respondent's office. After both notice and a hearing (during which time the CWC's counsel (who also represents Complainant) was present), the Honorable Judge Larsen entered a Temporary Restraining Order.

The CWC subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While the CWC's Motion to Dismiss was pending, the CWC voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against the CWC (which the CWC has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, the CWC's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. *See BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if the CWC was a labor organization, Respondent has the right to restrict the CWC's activity on its private property. *See NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seek to enjoin the CWC or any other individuals (including Complainant) from continuing its activities on public property, mere yards away from Respondent's business. Indeed, the CWC has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, are protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for either the CWC or Complainant engaging in protected concerted activity. Initially, Respondent's Complaint was not filed against Complainant, nor did Respondent mention Complainant in the Complaint. Further, the CWC is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in the CWC's activities. Neither the CWC nor Complainant had, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, the CWC's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. *See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant and the CWC have always, and continue to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited, in any manner, its employees' rights to self-organize or engage in protected concerted activity, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

VI. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support in order to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal.² Moreover, Complainant has not demonstrated that Respondent engaged in “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, the CWC is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiogale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int’l, Inc. v. Int’l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. Respondent states that it was not present during the September 24, 2014 job fair, and thus, did not refuse employment to any individual for actions arising out of said job fair. Moreover, Respondent has no records of Complainant ever applying for work with Respondent.

As Complainant has failed to allege any facts in support of her claim and the CWC is not a labor organization, Complainant’s claim must be dismissed.

VII. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant purports to assert a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of Respondent’s employees authorized either her or the CWC to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir.

² Respondent notes that an unfair labor practice charge may be filed by anyone. *Palisade Nursing Center*, Case No. 22-CA-28154, 2010 NWL 2180789 (2010) (citing *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB 230 (1973) for the proposition that any person can file an NLRB charge). Complainant alleges that she was “impacted” by the alleged retaliation, but does not specifically state that Respondent refused to assign her to work. Accordingly, Respondent cannot be sure if Respondent filed her Charge on behalf of herself or other unidentified individuals.

1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that she or the CWC is the representative of Respondent's employees, and accordingly, Respondent was under no duty to bargain collectively with Complainant or the CWC.³ For that reason, Respondent did not violate Section 8(a)(5).

VIII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and her attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. She has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson /b2

cc: MVP Workforce, LLC

³ Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent's employees or seeking to obtain voluntary recognition by Respondent. See *Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); see also *Kobell v. United Food and Commercial Workers Int'l Union*, 788 F.2d 189, 194 (3d Cir. 1986).



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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About Us

Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC have a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.

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EXHIBIT A



KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Dora Iara v. Personnel Staffing Group, LLC
Case No. 13-CA-149596**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent Personnel Staffing Group, LLC d/b/a Most Valuable Personnel ("PSG" and/or "Respondent") in this matter. Please direct all correspondence, questionnaires, and information requests to my attention.

Ms. Dora Iara ("Complainant") has asserted meritless claims against PSG. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity, and also that Respondent filed a lawsuit against "persons and an association of persons who engaged in and supported concerted activity." (*See* Charge Against Employer). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*). Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent's working conditions and a job fair occurring on September 24, 2014. (*Id.*). Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (7) of the National Labor Relations Act ("NLRA").

As an initial matter, the litigation referenced by Complainant was filed against a third-party organization (the Chicago Workers' Collaborative), which is not a labor organization, and two individuals employed by that organization. The litigation was not filed against Complainant. Moreover, the litigation was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because individuals trespassed on Respondent's private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order and that injunctive relief remains in effect today. The Chicago Workers' Collaborative (the "CWC") additionally filed a motion to dismiss, which has been denied.

Complainant's claim that she was not assigned work because of engaging in protected activity is also without merit for the reasons as will be discussed below. Finally, Complainant's Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against the CWC because it was engaging in wrongful conduct and obtained injunctive relief that remains intact. In response, the attorney representing this organization in the state court litigation and individuals apparently associated with the CWC have now brought a slew of NLRB claims against Respondent. This is one of those claims. It is without merit and Respondent respectfully requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, a third-party organization, the CWC began an extensive campaign against Respondent and other area temporary labor service agencies. During that time, the CWC traveled to Respondent's Cicero branch office location and on several occasions, blocked ingress and egress to the premises. CWC employees and supporters, who were not employed by Respondent, also illegally entered Respondent's business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, CWC would distribute flyers, while trespassing upon PSG's property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the CWC, its employees and associates refused to cease trespassing upon Respondent's premises and illegally disrupting its business operations.

On September 24, 2014, Respondent held a job fair for individuals in the Chicagoland community to fill out applications and to ask questions regarding Respondent's business. This job fair occurred on Respondent's property. During the job fair, four unknown individuals employed by the CWC stopped individuals from attending the community job fair by blocking access to the job fair and telling potential applicants that Respondent stole employees' wages, discriminated against employees, and refused to send injured employees to approved medical facilities. If an individual did fill out an application at the job fair, the CWC's employees would again stop the applicants in an effort to persuade them from working for Respondent.

The CWC then sent individuals into Respondent's business to apply for work, but when called for an assignment, refused to work for Respondent, stating they were "not interested." CWC employees also came inside Respondent's office, harassed its employees and interfered with its prospective economic relationships. As a result of the CWC's repeated trespasses onto Respondent's private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against the CWC and two individuals employed by the CWC, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers' Collaborative*, Case No. 2014 CH 16104 (the "State Court Litigation").

The CWC additionally filed a Motion for a Temporary Restraining Order requesting that the CWC be enjoined from trespassing into Respondent's private business and blocking ingress and egress to and from Respondent's office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent's Motion for a Temporary Restraining

Order. The Temporary Restraining Order provided that the CWC was “temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent’s Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, the CWC filed a Motion to Dismiss Respondent’s Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied the CWC’s Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, the CWC consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

Respondent has no records of Complainant, and does not have any record that Complainant ever applied for work with Respondent. Respondent has no knowledge of any kind about Complainant, including whether or not Complainant participated in any activity with the CWC, was present on Respondent’s premises on September 24, 2014, or whether she is a member of the CWC.

II. The CWC Is Not A “Labor Organization” Nor An “Employee” of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees’ rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that the CWC is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 157 of the Act; 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 Act 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

¹ Respondent’s Cicero office is located at 5637 West Roosevelt Road in Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of MVP Workforce, LLC, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

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. Initially, 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> (last accessed April 20, 2015), and attached hereto as Exhibit A). 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. A). 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. Nor does Complainant identify the CWC as “dealing with” employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that some unknown individuals “supported concerted activity.” (See Charge Against Employer). Furthermore, the CWC is not identified as a “labor organization” by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC’s organization consists of “social advocacy, legal services, and job-support services,” it is not a “labor organization” 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 to the present organization, as ROCNY and the CWC serve similar functions within their communities. Both 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. A with "Restaurant Opportunities Center of New York," www.rocny.org (last access April 20, 2015)). However, neither entity has a pattern or practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). The CWC, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See* Ex. A). Although the CWC has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. Therefore, to the extent that Complainant's Charge is based on her potential association with the CWC, it is clear that the CWC is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant claims arise out of Section 8(a)(1) and (3) based on the CWC's supposed status as a labor organization, those claims lack merit and must be dismissed.

III. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that presumably she, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See* Charge Against Employer). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom she alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). However, to the extent that Complainant's claims arise out of the actions on September 24, 2014 or the Temporary Restraining Order entered against the CWC, those claims are barred by the statute of limitations set forth in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (the supposed underlying concerted activity) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

IV. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its suit in the Circuit Court of Cook County, Illinois against the CWC and two individuals who are not employees of Respondent. None of Respondent's employees are named in the suit. Complainant is not named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent's employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by the CWC. On October 7, 2014, Respondent filed its Complaint and an Emergency Motion for a Temporary Restraining Order. Respondent's Motion for a Temporary Restraining Order requested only that the CWC be prohibited from blocking ingress and egress to Respondent's office and from entering the private premises of Respondent's office. After both notice and a hearing (during which time the CWC's counsel (who also represents Complainant) was present), the Honorable Judge Larsen entered a Temporary Restraining Order.

The CWC subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While the CWC's Motion to Dismiss was pending, the CWC voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First

Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against the CWC (which the CWC has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, the CWC's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. *See BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if the CWC was a labor organization (which it is not), Respondent has the right to restrict the CWC's activity on its private property. *See NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seek to enjoin the CWC or any other individuals (including Complainant) from continuing its activities on public property, mere yards away from Respondent's business. Indeed, the CWC has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, are protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for either the CWC or Complainant engaging in protected concerted activity. Initially, Respondent's Complaint was not filed against Complainant, nor did Respondent mention Complainant in the Complaint. Further, the CWC is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in the CWC's activities. Neither the CWC nor Complainant had, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, the CWC's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. *See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant and the CWC have always, and continue to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited its employees' rights to self-organize or engage in protected activities, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

V. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support in order to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal.² Moreover, Complainant has not demonstrated that Respondent engaged in “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, the CWC is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiongale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int’l, Inc. v. Int’l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. However, to the extent that Complainant complains of herself, Respondent has no record of Complainant ever applying for a position with Respondent. Respondent has no knowledge of Complainant or Complainant’s affiliations, much less any affiliation with a labor organization. Accordingly, Respondent did not discriminate against Complainant in any manner.

As Complainant has failed to allege any facts in support of her claim and the CWC is not a labor organization, Complainant’s claim must be dismissed.

VI. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant purports to assert a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of Respondent’s employees authorized either her or the CWC to engage in collective bargaining

² Respondent notes that an unfair labor practice charge may be filed by anyone. *Palisade Nursing Center*, Case No. 22-CA-28154, 2010 NWL 2180789 (2010) (citing *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB 230 (1973) for the proposition that any person can file an NLRB charge). Complainant alleges that she was “impacted” by the alleged retaliation, but does not specifically state that Respondent refused to assign her to work. Accordingly, Respondent cannot be sure if Respondent filed her Charge on behalf of herself or other unidentified individuals.

representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir. 1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that she or the CWC is the representative of Respondent's employees, and accordingly, Respondent was under no duty to bargain collectively with Complainant or the CWC.³ For that reason, Respondent did not violate Section 8(a)(5).

VII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and her attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. She has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson /br

cc: Personnel Staffing Group, LLC

³ Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent's employees or seeking to obtain voluntary recognition by Respondent. See *Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); see also *Kobell v. United Food and Commercial Workers Int'l Union*, 788 F.2d 189, 194 (3d Cir. 1986).



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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About Us

Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC have a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.

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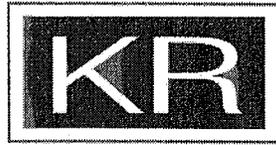
Our Campaigns

Campaigns
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The Temp Industry

Chicago Workers Collaborative
5014 S. Ashland
Chicago, IL 60609
www.chicagoworkerscollaborative.org
postmaster@chicagoworkerscollaborative.org
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Toll Free: 1-877-775-8242
Chicago, Waukegan and Rolling Meadows, IL

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EXHIBIT A



KOREY
RICHARDSON LLC

April 24, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Dora Iara v. MVP Workforce, LLC
Case No. 13-CA-149596**

Dear Ms. Schlabowske:

I hope that you are well. Please be advised that I represent MVP Workforce, LLC (“MVP Workforce” and/or “Respondent”) in this matter. Please direct all correspondence, questionnaires, and information requests to my attention.

Ms. Dora Iara (“Complainant”) has asserted meritless claims against Respondent. For starters, Complainant alleges that Respondent refused to assign unidentified individuals who engaged in a protected activity and also filed a lawsuit against “persons and an association of persons who engaged in and supported concerted activity.” (*See Charge Against Employer*). Complainant alleges that Respondent obtained a temporary restraining order against those involved. (*Id.*). Complainant further alleges that the supposed underlying concerted activity at issue was a protest regarding Respondent’s working conditions and a job fair occurring on September 24, 2014. (*Id.*). Complainant alleges that in doing so, Respondent violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act (“NLRA”).

As an initial matter, the litigation referenced by Complainant was filed against a third-party organization (the Chicago Workers’ Collaborative), which is not a labor organization, and two individuals employed by that organization. The litigation was not filed against Complainant. Moreover, the litigation was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because individuals trespassed on Respondent’s private property and engaged in other illegal activities. Indeed, and as admitted by Complainant, Respondent procured a Temporary Restraining Order and that injunctive relief remains in effect today. The Chicago Workers’ Collaborative (the “CWC”) additionally filed a motion to dismiss, which has been denied.

Further, Respondent did not hold a job fair on September 24, 2014 and Respondent did not have any part in said job fair. Complainant’s claim that she was not assigned work because of engaging in protected activity is also without merit for the reasons as will be discussed below. Finally, Complainant’s Charge is barred by the statute of limitations within Section 10(b) of the National Labor Relations Act.

Respondent filed a lawsuit against the CWC because it was engaging in wrongful conduct and obtained injunctive relief that remains intact. In response, the attorney representing this organization in the state court litigation and individuals apparently associated with the CWC have now brought a slew of NLRB claims against Respondent. This is one of those claims. It is without merit and Respondent respectfully requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. In or about November 2013, a third-party organization, the CWC began an extensive campaign against Respondent and other area temporary labor service agencies, including Personnel Staffing Group, LLC (“PSG”). During that time, the CWC traveled to Respondent’s Cicero branch office location and on several occasions, blocked ingress and egress to the premises. CWC employees and supporters, who were not employed by Respondent, also illegally entered Respondent’s business for the purpose of harassing its employees and disrupting its operations. In conjunction with this activity, CWC would distribute flyers, while trespassing upon Respondent’s property, accusing Respondent of committing crimes. Until such time as a restraining order was entered against the CWC, its employees and associates refused to cease trespassing upon Respondent’s premises and illegally disrupting its business operations.

On September 24, 2014, PSG held a job fair for individuals in the Chicagoland community. Neither Respondent nor its representatives were present at this job fair.

As a result of the CWC’s repeated trespasses onto Respondent’s private property, blocking of the ingress and egress to a private business, intentional interference with both prospective economic advantage and business operations, and defamation, on October 6, 2014, Respondent filed suit against the CWC and two individuals employed by the CWC, Tim Bell and Leone Bicchieri. Neither individual has ever sought employment with Respondent. That case is pending in the Circuit Court of Cook County, Illinois as *Personnel Staffing Group, LLC v. Chicago Workers’ Collaborative*, Case No. 2014 CH 16104 (the “State Court Litigation”).

Respondent additionally filed a Motion for a Temporary Restraining Order requesting that the CWC be enjoined from trespassing into Respondent’s private business and blocking ingress and egress to and from Respondent’s office. On October 9, 2014, after notice and a hearing, the Honorable Judge Diane J. Larsen granted Respondent’s Motion for a Temporary Restraining Order. The Temporary Restraining Order provided that the CWC was “temporarily restrained from blocking ingress and egress to and from the premises of Plaintiffs and/or entering the offices of Plaintiffs located at 5637 West Roosevelt Rd, Cicero, IL and 5017 West Cermak Rd, Cicero, IL.”¹

¹ Respondent’s Cicero office is located at 5017 West Cermak Road, Cicero, Illinois. The other address referenced in the Temporary Restraining Order is the office of PSG, a separate legal entity from Respondent, and another plaintiff in the state court litigation.

The Temporary Restraining Order was to remain in full force and effect until October 19, 2014, and the parties were to have a status on Respondent's Motion for a Preliminary Injunction on October 20, 2014. However, on October 17, 2014, the CWC filed a Motion to Dismiss Respondent's Complaint pursuant to 735 ILCS 5/2-619(a)(9) and the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* After a full briefing a hearing, the Honorable Judge Larsen denied the CWC's Motion to Dismiss on January 16, 2015.

During the pendency of the Motion to Dismiss and continuing now, the CWC consented to the continuance of the Temporary Restraining Order. As of an Order dated March 17, 2015, the Temporary Restraining Order remains continued by consent until May 14, 2015.

Respondent has no records of Complainant, and does not have any record that Complainant ever applied for work with Respondent. Respondent has no knowledge of any kind about Complainant, including whether or not Complainant participated in any organized activity with the CWC, or whether Complainant is a member of the CWC.

II. Respondent Is Not A "Single Employer" With Personnel Staffing Group, LLC

Respondent cannot be held liable for any acts or omissions of PSG. Although Complainant has filed the present Charge Against Employer against both PSG and Respondent, Complainant alleges no facts supporting its proposition that Respondent is a single employer with PSG. Respondent and PSG are two separate legal entities. *See Esmark, Inc. v. NLRB*, 887 F.2d 739, 753 (7th Cir. 1989). Based on the standard set forth in previous NLRB decisions, Respondent and PSG is not a single employer, and Complainant's Charge must be dismissed.

III. The CWC Is Not A "Labor Organization" Nor An "Employee" of Respondent Under The NLRA And As Such, Respondent Did Not Violate Section 8(a)(1) Or (3)

Complainant fails to identify the alleged manner in which Respondent violated any employees' rights to self-organize or assist a labor organization, or how Respondent discriminated against any employees to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that the CWC is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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.3 354, 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. Initially, 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> (last accessed April 20, 2015), and attached hereto as Exhibit A). 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. A). 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. Nor does Complainant identify the CWC as "dealing with" employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that some unknown individuals "supported concerted activity." (*See Charge Against Employer*). Furthermore, the CWC is not identified as a "labor organization" by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As the CWC's organization consists of "social advocacy, legal services, and job-support services," it is not a "labor organization" 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 the CWC serve similar functions within their communities. Both 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. A with "Restaurant Opportunities Center of New York,"* www.rocny.org (last access April 20, 2015)). However, neither entity has a pattern or practice of dealing with employers that extends over time, as required to be a labor organization under Section 2(5). The CWC, much like ROCNY, focuses on advocacy and education of workers' rights, according to its own website. (*See Ex. A*). Although the CWC has passed out flyers about workers' rights, it has never engaged in a pattern and practice of dealing with Respondent that extended over time. Therefore, to the extent that Complainant's Charge is based on her potential association with the CWC, it is clear that the CWC is not a labor organization subject to protection under the NLRA.

As a result, to the extent that Complainant's claims arise out of Section 8(a)(1) and (3) based on the CWC's supposed status as a labor organization, those claims lack merit and must be dismissed.

IV. Complainant's Claims Are Barred By The Statute Of Limitations Under Section 10(b) Of The NLRA

Complainant alleges that presumably she, and other unidentified individuals, participated in a protest and attended a job fair on Respondent's premises in September 24, 2014. (*See Charge Against Employer*). Complainant then claims that Respondent refused to assign individuals to work who participated in the September 24, 2014 protest and actions surrounding the job fair. (*Id.*). Complainant, however, fails to identify the individuals whom she alleges that Respondent failed to place on job assignment or the date(s) complained of. (*Id.*). As noted above, Respondent had no involvement in the September 24, 2014 job fair. Regardless, these claims are barred by the statute of limitations in 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). Complainant never served Respondent with a copy of its Charge Against Employer. Respondent only received notice of the Charge Against Employer 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.

Given that the acts complained within the Charge occurred on September 24, 2014 (although Respondent had no part in the job fair) and October 9, 2014 (the Circuit Court Judge's entry of the Temporary Restraining Order), it is clear that Complainant's Charge Against Employer is barred by the six-month limitations period identified in Section 10(b). To the extent that any acts

complained of occurred in September 2014, it is undeniable that Complainant's claims are barred. Furthermore, to the extent that Complainant complains of the entry of the Temporary Restraining Order, that claim is also barred because it is Complainant's duty and responsibility to ensure that the Charge was served on Respondent 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).

V. The Filing Of Respondent's Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson's Restaurant's Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

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The CWC subsequently filed a motion to dismiss Respondent's Complaint, arguing that Respondent's Complaint was a SLAPP under the Illinois Citizen Participation Act. On January 16, 2015, Judge Larsen denied Complainant's Motion to Dismiss. While the CWC's Motion to Dismiss was pending, the CWC voluntarily agreed to the continuance of the Temporary Restraining Order. In further orders, and in an order dated March 17, 2015, the CWC consented to the continuance of the Temporary Restraining Order until May 14, 2015.

Under *Bill Johnson's Restaurants*, only baseless litigation with the intent of "retaliating against an employee for the exercise of rights protected by § 7 of the NLRA" is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson's Restaurants*, 461 U.S. at 748.

Respondent has a reasonable basis for the filing of its state court litigation against Respondent. As previously noted, the Honorable Judge Larsen has issued a Temporary Restraining Order against the CWC (which the CWC has consented to the continuance of), determining that Respondent has a fair likelihood of success on the merits of its claims. Additionally, the CWC's Motion to Dismiss Respondent's Complaint was denied. It is clear, based on the procedural history of the state court litigation, that Respondent had a reasonable basis for filing its state court litigation. *See BE & K Const. Co.*, 536 U.S. at 530.

Furthermore, under established Supreme Court precedent, even if the CWC was a labor organization, Respondent has the right to restrict the CWC's activity on its private property. *See NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 109-14 (1956) (recognizing an employers' right to restrict nonemployees' distribution of flyers on private property); *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542-48 (1972). Respondent's Temporary Restraining Order merely restricts Complainant from blocking ingress and egress to Respondent's office and entering its private property to conduct its activities. Neither the Complaint nor the Temporary Restraining Order seek to enjoin the CWC or any other individuals (including Complainant) from continuing its activities on public property, mere yards away from Respondent's business. Indeed, the CWC has continued its activities on public property after the entry of the Temporary Restraining Order. In short, Respondent's Complaint and Temporary Restraining Order, found to have a reasonable basis and fair likelihood of success on the merits by the Honorable Judge Larsen, are protected by the First Amendment under *Bill Johnson Restaurants*.

Moreover, Respondent did not file the state court litigation in retaliation for either the CWC or Complainant engaging in protected concerted activity. Initially, Respondent's Complaint was not filed against Complainant, nor did Respondent mention Complainant in the Complaint. Further, the CWC is neither a labor organization nor an employee of Respondent. To Respondent's knowledge, none of its employees participated in the CWC's activities. Neither the CWC nor Complainant had, prior to the filing of the present Charge, filed a Charge Against Employer. Furthermore, the basis of the Temporary Restraining Order, the CWC's acts in trespassing on Respondent's private property and while there, interfering with its business, is not protected under Section 7 or 8 of the NLRA. *See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 205-06 (1978) (stating that the general rule under *Babcock* is that an employer has the right to bar groups, including nonemployee labor organizations, from its private property, and that trespassory activity is not generally protected activity under the NLRA). Respondent did not file its state court lawsuit for any reason other than to protect its rights. Complainant and the CWC have always, and continue to have, the right to engage in public protests – Respondent has simply asked that it not occur on its property and be within the confines of First Amendment law.

Respondent has not limited, in any manner, its employees' rights to self-organize or engage in protected concerted activity, and accordingly, Respondent has not violated Sections 8(a)(1) or (3) of the NLRA.

VI. Respondent Did Not Refuse To Assign Job Applicants Engaged In Protected Concerted Activity

Complainant makes the general allegation, without any factual support in order to permit Respondent to respond, that Respondent refused to place individuals on job assignment due to their involvement in protected concerted activity. Initially, Complainant does not identify any individual whom Complainant claims Respondent refused to assign to work or any of the facts and circumstances surrounding the alleged failure to assign the individual to work, such as the date and time of this supposed refusal.² Moreover, Complainant has not demonstrated that Respondent engaged in “discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.” 29 U.S.C. § 158(a)(3). As discussed at length above, the CWC is not a labor organization.

Respondent has not discriminated against job applicants or employees to discourage membership in any union. In order to establish such a claim, Complainant must show: (1) that Respondent was hiring at the time of the alleged unlawful conduct; (2) that applicants were qualified; and (3) that anti-union animus contributed to the decision not to hire the applicants. *Masiongale Electrical-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir. 2003). Moreover, applicants cannot seek relief based on being denied a job if they would have turned it down and it is their burden to produce evidence of what they would have done had they been offered a job. *Starcon Int’l, Inc. v. Int’l Bhd. of Boilermakers*, 450 F.3d 276, 278-79 (7th Cir. 2006). Complainant has failed to make even a *prima facie* claim that Respondent engaged in unlawful conduct – and without more specific factual allegations, Respondent cannot properly respond to Complainant’s allegations. Respondent states that it was not present during the September 24, 2014 job fair, and thus, did not refuse employment to any individual for actions arising out of said job fair. Moreover, Respondent has no records of Complainant ever applying for work with Respondent.

As Complainant has failed to allege any facts in support of her claim and the CWC is not a labor organization, Complainant’s claim must be dismissed.

VII. Complainant Is Not A Representative Of Respondent’s Employees Under The NLRA; Accordingly, Respondent Did Not Violate Section 8(a)(5)

Although Complainant purports to assert a claim under Section 8(a)(5), that claim is entirely without merit. Initially, Complainant is not the representative of Respondent’s employees. To Respondent’s knowledge, Complainant has never filed a representative petition with the NLRB. Moreover, Complainant has never provided Respondent with any evidence that a majority of Respondent’s employees authorized either her or the CWC to engage in collective bargaining representation. *NLRB v. Ralph Printing & Lithographing Co.*, 379 F.2d 687, 692 (8th Cir.

² Respondent notes that an unfair labor practice charge may be filed by anyone. *Palisade Nursing Center*, Case No. 22-CA-28154, 2010 NWL 2180789 (2010) (citing *Utility Workers Union of America (Ohio Power Co.)*, 203 NLRB 230 (1973) for the proposition that any person can file an NLRB charge). Complainant alleges that she was “impacted” by the alleged retaliation, but does not specifically state that Respondent refused to assign her to work. Accordingly, Respondent cannot be sure if Respondent filed her Charge on behalf of herself or other unidentified individuals.

1967). The duty to engage in collective bargaining only attaches upon the demand by the authorized representative as soon as the representative provides convincing evidence of its majority status. *NLRB v. Ozark Motor Lines*, 403 F.2d 356, 359 (8th Cir. 1968). Complainant has never provided Respondent with any evidence that she or the CWC is the representative of Respondent's employees, and accordingly, Respondent was under no duty to bargain collectively with Complainant or the CWC.³ For that reason, Respondent did not violate Section 8(a)(5).

VIII. Respondent Respectfully Requests That The NLRB Invoke Its Inherent Authority And Enter Sanctions Against Complainant

Complainant's Charge Against Employer is meritless, frivolous, not based in law or fact, and barred by the statute of limitations. Apparently Complainant, and her attorney, are unhappy with the status of the state court litigation against the CWC and have filed the present Charge. It would seem that this Charge, and the others lodged against Respondent, is being made in an attempt to gain leverage in the state court litigation. That is remarkably inappropriate. The Complainant has attempted to infringe upon Respondent's clearly established First Amendment right of access to the courts and right to petition the government for redress of grievances.

Complainant's Charge was filed without good faith or a reasonable basis. She has filed its meritless Charge in an effort to engage in dilatory tactics and to harass Respondent. Accordingly, sanctions are appropriate. *Fernandes Supermarkets, Inc.*, 203 NLRB 568, 568-69 (1973) (finding that sanctions were appropriate where charging party abused NLRB's process).

For all of the foregoing reasons, Respondent requests that Complainant's Charge Against Employer be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Elliot Richardson /kz

cc: MVP Workforce, LLC

³ Respondent adamantly denies that the CWC is a labor organization. However, if Complainant or the CWC are claiming that it is a labor organization, then the CWC has engaged in unfair labor practices under Section 8(b)(7)(C) by picketing an unorganized employer with the goal of organizing Respondent's employees or seeking to obtain voluntary recognition by Respondent. See *Restaurant Opportunities Center of New York*, 34 NLRB AMR 28 (2006); see also *Kobell v. United Food and Commercial Workers Int'l Union*, 788 F.2d 189, 194 (3d Cir. 1986).



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

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Path to Citizenship should not be tied to any other issue

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Change 4 Good celebrates its first official trainee to receive his barber license!

▶ Comité de Mujeres

CWC Helps Bring National Media Coverage to Temp Staffing Abuses

CWC Members And Supporters Deliver Message Loud And Clear To Temp Staffing Agencies: No More Abuse! We Want Respect, And A Voice At Work!

Forever Temp? Once a bastion of good jobs, manufacturing has gone gaga for temps.

State Representative La Shawn K. Ford commits to toughen temp agency regulations stop discrimination

The New Temp Economy

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About Us

Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC has a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.

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Warehouse Workers for Justice
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Chicago Workers Collaborative
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www.chicagoworkerscollaborative.org
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Toll Free: 1-877-775-6242
Chicago, Waukegan and Rolling Meadows, IL

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EXHIBIT A

EXHIBIT 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PERSONNEL STAFFING GROUP, LLC,)
a Florida limited liability company d/b/a,)
MOST VALUABLE PERSONNEL, and)
MVP WORKFORCE, LLC, a Delaware)
limited liability company,)

Plaintiff,)

v.)

Case No.)

CHICAGO WORKERS' COLLABORATIVE,)
an Illinois not-for-profit corporation, LEONE)
BICCHIERI, an individual, and TIM BELL,)
an individual,)

Defendants.)

VERIFIED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COME Plaintiffs, PERSONNEL STAFFING GROUP, LLC d/b/a MOST VALUABLE PERSONNEL ("MVP") and MVP WORKFORCE, LLC ("MVP Workforce" and collectively with MVP, "Plaintiffs"), by and through their attorneys, KOREY RICHARDSON LLC, and for their Verified Complaint for Injunctive and Other Relief against Defendants, CHICAGO WORKERS' COLLABORATIVE ("CWC"), LEONE BICCHIERI ("Bicchieri"), TIM BELL ("Bell," and collectively with CWC and Bicchieri, "Defendants"), states as follows:

INTRODUCTION

1. Plaintiffs MVP and MVP Workforce are temporary labor service agencies that provide jobs to thousands of workers throughout the Chicagoland area. Plaintiffs place employees on job assignments with numerous Chicago area companies. Along with providing temporary labor services, MVP and MVP Workforce also service third-party companies by

placing their employees on a temp-to-hire basis. Accordingly, Plaintiffs are finding permanent jobs for Chicago area residents with established and well-regarded companies.

2. CWC publicly demonstrates that it is opposed to the temporary labor service industry. On its website, CWC blames the temporary labor service industry for the poverty crisis in the Chicago area and states that companies use temporary labor service agencies “to destroy the collective power of their workers by dividing them along racial, gender and immigration-status lines, making income and seniority rights unstable, and psychologically beating workers into tolerating inhuman abuse in exchange for work.”

3. CWC identifies itself as a non-profit organization. However, the organization is highly focused on developing litigation against temporary labor service agencies (and class action litigation in particular) and soliciting plaintiffs and/or class members for those lawsuits.

4. CWC’s website boasts that it sent an organizer to law school in 2002 to set up the legal wing of the CWC. Attorney Christopher J. Williams served as the Executive Director of CWC’s self-identified “legal wing” from its inception until recently.

5. Since 2005, Christopher Williams has brought numerous class action lawsuits against temporary labor service agencies seeking monetary damages.

6. CWC has launched a campaign against both MVP and MVP Workforce, in an effort to, upon information and belief, improperly solicit class members for existing litigation and harass Plaintiffs.

7. This campaign includes standing outside Plaintiffs’ offices (thereby blocking access to the offices) and telling job applicants and existing employees that Plaintiffs are racist and engage in illegal conduct and employment practices.

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8. CWC, through its members, agents, representatives, and/or others acting in concert with CWC or on its behalf, have blocked ingress and egress to Plaintiffs' offices and have boldly entered Plaintiffs' offices, confronted workers, and taken photographs without Plaintiffs' permission.

9. CWC is putting undue stress on Plaintiffs' workforce by sending in its "members" to apply for positions they have no intention of taking.

10. CWC's conduct is jeopardizing Plaintiffs' businesses and threatening the livelihood of thousands of employees that rely on Plaintiffs to provide them employment opportunities.

PARTIES, JURISDICTION, AND VENUE

11. Plaintiff MVP is a Florida limited liability company with its principal place of business in the Village of Northbrook, County of Cook, and State of Illinois.

12. Plaintiff MVP Workforce is a Delaware limited liability company with its principal place of business in the Village of Northbrook, County of Cook, and State of Illinois.

13. Defendant CWC is an Illinois not-for-profit corporation with, upon information and belief, its principal place of business in the City of Chicago, County of Cook, and State of Illinois.

14. Upon information and belief, Defendant Bicchieri is an individual residing in the State of Illinois.

15. Upon information and belief, Defendant Bell is an individual residing in the State of Illinois.

16. Venue is proper in the Circuit Court of Cook County, Illinois, as the events giving rise to the causes of action asserted herein primarily occurred within Cook County, Illinois.

STATEMENT OF FACTS

17. MVP is a temporary labor service agency that provides personnel and payroll services to third party client companies.

18. MVP Workforce is a temporary labor service agency that provides clerical and industrial personnel services to third party client companies.

19. Plaintiffs provide employment opportunities for job seekers in the communities near Plaintiffs' offices to work within their communities.

20. Defendant CWC holds itself out to be a workers' rights organization. Upon information and belief, one of CWC's primary goals is to destroy the temporary labor service industry, and lately, in particular the operations of Plaintiffs.

21. Defendant Bicchieri is the present Executive Director of CWC.

22. Defendant Bell is the former Executive Director of CWC, and its present Senior Organizer.

23. According to its website, CWC believes that its membership resides in poverty due to the temporary labor service industry, because, according to CWC, companies use temporary labor service agencies "to destroy the collective power of their workers by dividing them along racial, gender and immigration-status lines, making income and seniority rights unstable, and psychologically beating workers into tolerating inhuman abuse in exchange for work."

24. According to its website, in 2002, CWC sent an organizer to law school to set up the "legal wing" of CWC, the Working Hands Legal Clinic.

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25. Since then, CWC and its collaborators have used the legal system to extract significant sums of money from temporary labor service agencies and relentlessly sought media attention highlighting their efforts to destroy the industry.

26. Upon information and belief, in actuality, the actions taken by CWC appear to be designed to destroy the temporary labor service agency; however, CWC's true motive is to coerce temporary labor service agencies into settling these federal class action lawsuits for significant sums of money for CWC.

CWC Begins a Campaign Against MVP and MVP Workforce

27. In or around November 2013, CWC began an extensive campaign against MVP and other temporary labor service agencies, which included campaigns against MVP Workforce.

28. At that time, CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC began protesting against MVP at its offices throughout the Chicagoland area and also at MVP Workforce's offices.

29. Since November 2013, CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC have visited Plaintiffs' offices several times a month, blocking the doors to those offices, and advising those seeking employment at the offices that Plaintiffs are racist and are engaging in illegal activity and employment practices.

30. While protesting, CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC have distributed and continue to distribute flyers falsely implying that Plaintiffs steal the wages of their employees.

31. This has been done outside of Plaintiffs' offices and, recently, CWC members have boldly started entering and distributing the flyers inside Plaintiffs' offices. One such flyer, in Spanish, reads, "MVP: EL ROBO DE SUELDO ES UN CRIMEN!" (in English, "MVP: The

Stealing of Wages is a Crime!"). (A copy of the November 2013 flyer is attached hereto as Exhibit A).

32. Plaintiffs' office personnel repeatedly requested that the protesters leave Plaintiffs' premises and not return; however, the protesters have not immediately done so and when they finally would disperse, they would continually return a few hours later.

33. CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC have taunted and disparaged (and continue to taunt and disparage) Plaintiffs' employees as they would leave Plaintiffs' offices in an effort to discourage said employees from working for Plaintiffs.

34. CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC have yelled and continue to yell that the employees will not be paid, that Plaintiffs are engaging in "slave labor," that Plaintiffs are racist, that Plaintiffs will cheat employees out of their overtime, and that Plaintiffs will not pay the employees' medical expenses when they are hurt.

35. The above-referenced statements, taunts, and accusations were and are false and blatantly defamatory.

36. CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC have also harassed and continue to harass job applicants and employees entering or leaving Plaintiffs' offices, forcing them to listen to CWC's defamatory remarks and intimidating them.

37. Recently, the intensity of these protests has increased, and CWC, its employees, agents, representatives, and/or others acting in concert with or on behalf of CWC have also

begun protesting outside of Plaintiffs' client companies and handing out flyers in the community. (A copy of one such flyer is attached hereto as Exhibit B).

38. On September 24, 2014, CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC entered the office of MVP Workforce through deceit. While on the premises, and until such time as they were compelled to leave, these protesters confronted potential workers, distributed flyers, and disrupted Plaintiffs' operations.

39. Similarly, on October 2, 2014, CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC entered MVP's office in Cicero, Illinois, and harassed employees, took pictures of MVP's office without permission, and generally attempted to disrupt MVP's business.

40. As the Executive Director and Senior Organizer of CWC, Defendants Bicchieri and Bell direct the actions of CWC and its volunteers and members. As such, Defendants Bicchieri and Bell have been directly involved in, and have spearheaded, the campaign of harassment and defamation against Plaintiffs.

The September 24, 2014 Job Fair

41. MVP organized a community job fair on September 24, 2014 in an effort to recruit candidates to fill a number of positions. MVP invited community members to apply for jobs at this job fair.

42. This job fair occurred on MVP's premises, just outside of the front door of MVP's Cicero office.

43. CWC's employees, agents, representatives, and/or others acting in concert with or on behalf of CWC attended the fair, blocked access to the tables MVP had set up, and interfered with individuals attempting to fill out job applications with MVP.

44. In particular, four individuals acting on CWC's behalf stopped nearly every individual who approached MVP's table at the community job fair.

45. These individuals then told the potential job applicants that MVP engaged in unfair employment practices, discriminated against employees, stole employees' wages, refused to send injured employees to approved medical facilities, and made other defamatory remarks.

46. Once job applicants filled out an application, the individuals acting on behalf of CWC again stopped the job applicants in an effort to persuade them from working for MVP.

47. The individuals present at the job fair on behalf of CWC also filled out applications to work at MVP, but later refused work assignments from MVP, thereby hindering MVP's business operations and preventing other job applicants from applying.

CWC and Bell Make Misrepresentations to MVP Workforce to Promote Their Agenda

48. On September 24, 2014, Defendant Bell went to MVP Workforce's office in Cicero, Illinois.

49. Bell approached dispatchers at that office and asked if they knew Darron Grottolo, the Director of Operations for MVP Workforce.

50. When the dispatchers said yes, Bell told them that he had the permission of Darren Grottolo to be on the premises and to speak with MVP Workforce's employees.

51. Bell did not have Darron Grottolo's permission to be on the premises or to speak with MVP Workforce's employees.

52. In fact, as one of the individuals who had previously protested at MVP and MVP Workforce's office, he knew that he did not have permission to be present and he had previously been asked to leave the premises.

53. After misleading the dispatchers, Bell then confronted employees at MVP Workforce before eventually being compelled to leave the premises.

54. Upon information and belief, Bell made blatant misrepresentations to MVP Workforce's employees in an effort to coerce them into allowing him to speak with those employees and in order to make false and defamatory statements regarding MVP Workforce to said employees.

Irreparable Harm

55. Defendants, their agents, representatives, and others acting in concert with or on their behalf have continually trespassed on Plaintiffs' property despite repeated requests that they leave, have continually blocked access to Plaintiffs' offices by placing themselves directly in front of Plaintiffs' doors, have harassed Plaintiffs' employees and potential job applicants, and have purposefully and maliciously interfered with Plaintiffs' business operations.

56. As a result of the actions of Defendants, their agents, representatives, and others acting in concert with or on their behalf, Plaintiffs have lost a number of employees who have sought work assignments with other temporary labor service agencies in order to avoid the constant harassment by Defendants, their agents, representatives, and others acting in concert with or on their behalf.

57. By trespassing on Plaintiffs' property and intimidating Plaintiffs' employees, Defendants, their agents, representatives, and others acting in concert with or on their behalf have created a distressing work environment for Plaintiffs' employees.

58. As a result of the actions by Defendants, their agents, representatives, and others acting in concert with or on their behalf, Plaintiffs' labor pool has been diluted with applicants who applied in bad faith and Plaintiffs have suffered a decrease in job applicants.

59. A number of applicants who would have sought work assignments with Plaintiffs have refused job assignments with Plaintiffs because of the actions of Defendants, their agents, representatives, and others acting in concert with or on their behalf.

60. Over the past several weeks, the conduct of Defendants, their agents, representatives, and others acting in concert with or on their behalf have intensified and is threatening to destroy Plaintiffs' reputation and goodwill. Plaintiffs are permanently losing potential employees who are beginning to visit competing temporary labor service agencies. Moreover, CWC's protests at Plaintiffs' third-party clients are threatening their relationships with those customers.

COUNT I
Intentional Interference with Business Operations

61. Plaintiffs re-incorporate and re-allege the allegations of Paragraphs 1 through 60 as if fully set forth herein.

62. Defendants, their agents, representatives, and others acting in concert with or on their behalf have engaged in a systematic and targeted campaign of harassment, intimidation, defamation, and malicious interference against Plaintiffs.

63. Defendants, their agents, representatives, and others acting in concert with or on their behalf have blocked access to Plaintiffs' offices, preventing job applicants from being able to enter Plaintiffs' offices.

64. Defendants, their agents, representatives, and others acting in concert with or on their behalf have harassed and intimidated job applicants at Plaintiffs' offices, at times causing job applicants to turn away from Plaintiffs.

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65. Defendants, their agents, representatives, and others acting in concert with or on their behalf have taunted and disparaged Plaintiffs' employees, yelling false and defamatory remarks about Plaintiffs, while those employees are sent out on job assignments.

66. As a result of the actions taken by Defendants, their agents, representatives, and others acting in concert with or on their behalf, Plaintiffs have suffered a decrease in job applicants and have had employees leave Plaintiffs' employ for that of their competitors, causing a severe disruption in Plaintiffs' business operations.

67. Defendants, their agents, representatives, and others acting in concert with or on their behalf have also applied for jobs with Plaintiffs in bad faith without the intention of accepting employment.

68. This has diluted Plaintiffs' labor pool, further disrupting Plaintiffs' business operations by hampering Plaintiffs' ability to efficiently administer its clients' staffing needs.

69. Upon information and belief, Defendants, their agents, representatives, and others acting in concert with or on their behalf have engaged in this systematic and targeted interference with Plaintiffs' business operations in a malicious attempt to disrupt Plaintiffs' businesses and with the ultimate goal of forcing Plaintiffs to abandon their operations in Illinois.

70. The admitted purpose of CWC is to put an end to the temporary labor service industry, and accordingly, the actions taken by Defendants, their agents, representatives, and others acting in concert with or on their behalf were done with malicious intent and with reckless indifference to Plaintiffs' right to conduct their business.

71. The actions taken by Defendants, their agents, representatives, and others acting in concert with or on their behalf have caused Plaintiffs damages in that Plaintiffs have lost

employees to competitors and have suffered a severe disruption in their ability to efficiently conduct their business.

72. Plaintiffs have additionally suffered damage to their reputation and goodwill every time that job applicants and employees have been intimidated, interrogated, and harassed by Defendants, their agents, representatives, and others acting in concert with or on Defendants' behalf when blocking ingress and egress to and from Plaintiffs' offices or trespassing onto Plaintiffs' property.

WHEREFORE, Plaintiffs, PERSONNEL STAFFING GROUP, LLC d/b/a MOST VALUABLE PERSONNEL and MVP WORKFORCE, LLC respectfully request that this Honorable Court: (a) enter judgment in favor of Plaintiffs and against Defendants, (b) enter a preliminary and permanent injunction against Defendants and prohibiting Defendants from interfering with Plaintiffs' business operations by blocking the ingress and egress from Plaintiffs' property and trespassing onto Plaintiffs' property; (c) award Plaintiffs their actual and compensatory damages; (d) award Plaintiffs punitive damages; and (e) award Plaintiffs such further relief as this Court deems equitable and just.

COUNT II

Intentional Interference with Prospective Business Advantage

73. Plaintiffs re-incorporate and re-allege the allegations of Paragraphs 1 through 72 as if fully set forth herein.

74. Plaintiffs have a reasonable expectation of entering into employment relationships with job applicants and employees who have gone and continue to go to Plaintiffs' offices and who attended MVP's job fair.

75. By protesting outside of Plaintiffs' offices, harassing Plaintiffs' employees, and yelling defamatory and disparaging remarks at Plaintiffs' job applicants and employees,

Defendants, their agents, representatives, and others acting in concert with or on their behalf have prevented a number of job applicants and employees from accepting job assignments with Plaintiffs.

76. Instead, a number of job applicants and employees have sought job assignments with MVP's competitors.

77. Defendants, their agents, representatives, and others acting in concert with or on their behalf have blocked access to Plaintiffs' offices, preventing job applicants from being able to enter Plaintiffs' offices.

78. Defendants, their agents, representatives, and others acting in concert with or on their behalf have taunted and disparaged Plaintiffs' employees by yelling false and defamatory remarks about Plaintiffs, while those employees were sent out on job assignments.

79. As a result of the actions taken by Defendants, their agents, representatives, and others acting in concert with or on their behalf, Plaintiffs have suffered a decrease in job applicants and have had employees leave Plaintiffs' employ for that of their competitors, causing a severe disruption of Plaintiffs' business operations.

80. Defendants have further applied for jobs with Plaintiffs in bad faith without the intention of accepting employment.

81. This has diluted Plaintiffs' labor pool, further disrupting Plaintiffs' business operations by hampering Plaintiffs' ability to efficiently administer its clients' staffing needs.

82. Upon information and belief, Defendants, their agents, representatives, and others acting in concert with or on their behalf have engaged in this systematic and targeted interference with Plaintiffs' business operations in a malicious attempt to disrupt Plaintiffs' businesses and with the ultimate goal of forcing Plaintiffs to abandon their operations in Illinois.

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83. The admitted purpose of CWC is to put an end to the temporary labor service industry, and accordingly, the actions taken by Defendants, their agents, representatives, and others acting in concert with or on their behalf were taken with malicious intent and with reckless indifference to Plaintiffs' right to conduct their business.

84. The actions taken by Defendants, their agents, representatives, and others acting in concert with or on their behalf have caused Plaintiffs damages in that Plaintiffs have lost employees to competitors, have suffered a decrease in job applicants accepting positions, and have suffered a severe disruption in their ability to efficiently conduct their business.

85. Plaintiffs have additionally suffered damage to their reputation and goodwill every time that job applicants and employees have been intimidated, interrogated, and harassed by Defendants, their agents, representatives, and others acting in concert with or on Defendants' behalf when blocking ingress and egress to and from Plaintiffs' offices or trespassing onto Plaintiffs' property.

WHEREFORE, Plaintiffs, PERSONNEL STAFFING GROUP, LLC d/b/a MOST VALUABLE PERSONNEL and MVP WORKFORCE, LLC respectfully request that this Honorable Court: (a) enter judgment in favor of Plaintiffs and against Defendants, (b) enter a preliminary and permanent injunction against Defendants and prohibiting Defendants from interfering with Plaintiffs' prospective business advantages by blocking the ingress and egress from Plaintiffs' property and trespassing onto Plaintiffs' property; (c) award Plaintiffs their actual and compensatory damages; (d) award Plaintiffs punitive damages; and (e) award Plaintiffs such further relief as this Court deems equitable and just.

COUNT III
Trespass to Land

86. Plaintiffs re-incorporate and re-allege the allegations of Paragraphs 1 through 85 as if fully set forth herein.

87. Plaintiffs are the equitable and real owners and/or tenants of several offices in the Chicagoland area.

88. Defendants, their agents, representatives, and others acting in concert with or on their behalf have protested at Plaintiffs' offices, coming into Plaintiffs' offices, blocking the ingress and egress to and from Plaintiffs' property, and disrupting their business operations.

89. At numerous times, Plaintiffs have requested that Defendants, their agents, representatives, and others acting in concert with or on their behalf leave their premises and take their protests to the public sidewalk and that Defendants, their agents, representatives, and others acting in concert with or on their behalf were not permitted inside Plaintiffs' offices.

90. Defendants, their agents, representatives, and others acting in concert with or on their behalf ignored Plaintiffs' lawful request that they leave Plaintiffs' property and have continued to trespass on Plaintiffs' land.

91. When Defendants, their agents, representatives, and others acting in concert with or on their behalf would finally leave the premises, they would always return either hours or days later.

92. At all times when Defendants, their agents, representatives, and others acting in concert with or on their behalf returned to Plaintiffs' property, they were aware that they did not have permission or authorization to be on Plaintiffs' property.

93. At all times when Defendants, their agents, representatives, and others acting in concert with or on their behalf returned to Plaintiffs' property, they did so with reckless indifference for Plaintiffs' rights with respect to their property.

94. Defendants' trespass to Plaintiffs' property is repeated and, without injunctive relief prohibiting Defendants from entering Plaintiffs' property, there is a reasonable certainty that it will continue to occur, thereby causing irreparable harm to Plaintiffs' business operations.

WHEREFORE, Plaintiffs, PERSONNEL STAFFING GROUP, LLC d/b/a MOST VALUABLE PERSONNEL and MVP WORKFORCE, LLC respectfully request that this Honorable Court: (a) enter judgment in favor of Plaintiffs and against Defendants, (b) enter a preliminary and permanent injunction against Defendants prohibiting Defendants from trespassing onto Plaintiffs' property and blocking the ingress and egress from Plaintiffs' offices; (c) award Plaintiffs their actual and compensatory damages; (d) award Plaintiffs punitive damages; and (e) award Plaintiffs such further relief as this Court deems equitable and just.

COUNT IV
Defamation

95. Plaintiffs re-incorporate and re-allege the allegations of Paragraphs 1 through 94 as if fully set forth herein.

96. Defendants, their agents, representatives, and others acting in concert with or on their behalf have engaged in a systematic and targeted campaign against Plaintiffs, including publicly defaming Plaintiffs.

97. Defendants, their agents, representatives, and others acting in concert with or on their behalf have publicly accused Plaintiffs of stealing wages, failing to pay their employees overtime, engaging in "slave labor," being racist, and refusing to pay their employees' medical expenses when injured.

98. Defendants, their agents, representatives, and others acting in concert with or on their behalf have made these statements as part of their campaign to disrupt Plaintiffs' businesses, and further, Defendants, their agents, representatives, and others acting in concert with or on their behalf have made these defamatory statements to Plaintiffs' potential job applicants and current employees.

99. The above-referenced statements were and are false.

100. The statements of Defendants, their agents, representatives, and others acting in concert with or on their behalf constitute defamation per se, as the statements impugn Plaintiffs' business practices and integrity, accuse Plaintiffs of committing criminal offenses, and generally harm and prejudice Plaintiffs' reputation and goodwill within the community regarding Plaintiffs' business operations.

101. Defendants, their agents, representatives, and others acting in concert with or on their behalf have made these statements with malicious intent, as the stated purpose of CWC is to destroy the temporary labor service industry, or at least, the statements were made with reckless indifference to their truth or falsity.

102. Defendants, their agents, representatives, and others acting in concert with or on their behalf have harmed Plaintiffs by making the above statements, as Plaintiffs' number of job applicants has decreased and a number of Plaintiffs' employees have left Plaintiffs' employ in order to seek work assignments from their competitors.

103. The statements by Defendants, their agents, representatives, and others acting in concert with or on their behalf further have harmed Plaintiffs' reputation and goodwill within the communities that Plaintiffs are attempting to help by providing employment opportunities.

WHEREFORE, Plaintiffs, PERSONNEL STAFFING GROUP, LLC d/b/a MOST VALUABLE PERSONNEL and MVP WORKFORCE, LLC respectfully request that this Honorable Court: (a) enter judgment in favor of Plaintiffs and against Defendants, (b) award Plaintiffs their actual and compensatory damages; (c) award Plaintiffs punitive damages; and (d) award Plaintiffs such further relief as this Court deems equitable and just.

COUNT V
Fraud
(MVP Workforce v. CWC & Tim Bell)

104. Plaintiffs re-incorporate and re-allege the allegations of Paragraphs 1 through 103 as if fully set forth herein.

105. On September 24, 2014, Tim Bell, both in his individual capacity and as the Senior Organizer for CWC, went to MVP Workforce's Cicero office branch.

106. Defendant Bell approached MVP Workforce's dispatchers on duty and asked them if they knew Darron Grottolo, the Director of Operations for MVP Workforce.

107. When the dispatchers affirmed that they knew Mr. Grottolo, Bell stated that he had permission from Mr. Grottolo to speak with MVP Workforce's employees.

108. Bell did not have Mr. Grottolo's permission to be on the premises or to speak with MVP Workforce's employees.

109. In fact, as a previous participant in the protests against Plaintiffs, Mr. Bell had been requested repeatedly to leave the premises and instructed not to return.

110. However, Bell confronted employees at MVP Workforce before being eventually compelled to leave the premises.

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2014-CH-16104
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111. Bell made blatant misrepresentations to MVP Workforce's employees in an effort to coerce them into allowing him to speak with those employees and in order to make false and defamatory statements regarding MVP Workforce to its employees.

112. Upon information and belief, Bell made false and defamatory statements to MVP Workforce's employees.

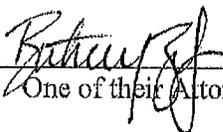
113. As a result of Bell's misrepresentations to MVP Workforce's dispatchers and employees, Plaintiffs suffered damages, as he made false and defamatory statements to MVP Workforce's employees thereby harming MVP Workforce's reputation.

114. Bell was at all times aware that he was trespassing on MVP Workforce's property, that he did not have permission to speak to any MVP Workforce employee, that he was making misrepresentations to MVP Workforce's dispatchers, and that he was making false statements to MVP Workforce's employees regarding MVP Workforce.

WHEREFORE, Plaintiff, MVP WORKFORCE, LLC respectfully request that this Honorable Court: (a) enter judgment in its favor and against Defendants Chicago Workers' Collaborative and Tim Bell, (b) award MVP Workforce its actual and compensatory damages; (c) award it punitive damages; and (d) award it such further relief as this Court deems equitable and just.

Respectfully submitted,

PERSONNEL STAFFING GROUP, LLC d/b/a
MOST VALUABLE PERSONNEL and MVP
WORKFORCE, LLC

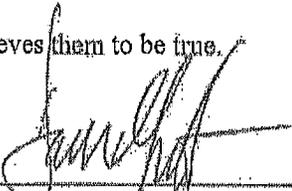
By:  _____
One of their Attorneys

Elliot Richardson
Carter A. Korey
Britney Zilz
KOREY RICHARDSON LLC
20 S. Clark St., Suite 500
Chicago, Illinois 60603
P: 312.372.7075
F: 312.372.7076
Atty. No.: 57414
Attorneys for Plaintiffs

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PAGE 20 of 24

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned, Darron Grottolo, the Director of Operations of MVP Workforce, LLC, verifies that the statements set forth in the foregoing instrument are true and correct, except as to matters stated therein to be on information and belief and as to such matters the undersigned certifies that the undersigned verily believes them to be true.



Darron Grottolo

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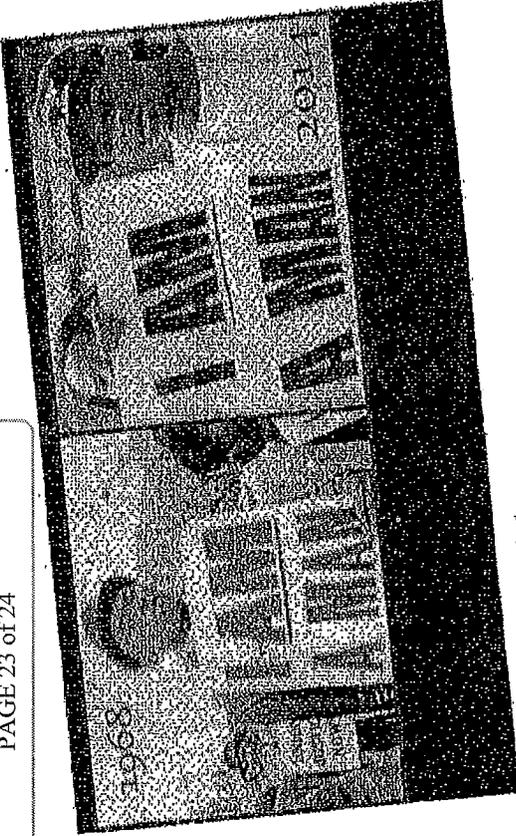
VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned, Daniel Barnett, the Chief Executive Officer of Personnel Staffing Group, LLC, verifies that the statements set forth in the foregoing instrument are true and correct, except as to matters stated therein to be on information and belief and as to such matters the undersigned certifies that the undersigned verily believes them to be true.



Daniel Barnett

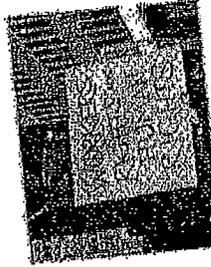
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2014-CH-16104
PAGE 22 of 24



#50Workers

Lets Go To Work!

When
Wednesday Sept 24th
Where
Most Valuable Personnel Inc.
557 W. Roosevelt Rd.
Chicago, IL 60607
Why
Because We Need Jobs!

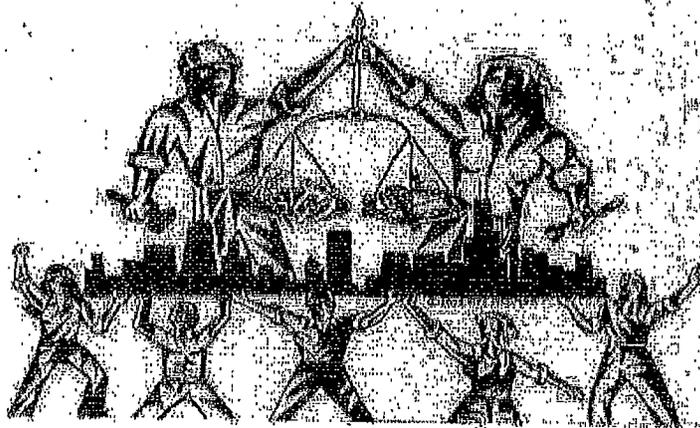


Chicago Workers Collaborative
1012 S. Ashland
Chicago, IL 60607
773.527.1440



MVP: EL ROBO DE SUELDO ES UN CRIMEN!

Cansados con el abuso? Los trabajadores temporales han formado su propia Organización que se llama La Colaborativa de Trabajadores de Chicago. Llámanos hoy!!! 847-577-0330



Muchas agencias temporales están agrupadas en una Asociación de Agencias que se llama: *Staffing Service Association of Illinois*. Entendemos que MVP es una de ellas. La Colaborativa ha acudido a la Asociación de Agencias Temporales para exigir cambios, y les presentamos Las 7 Normas Laborales que las agencias deben de respetar:

- 1- Contratación Justa
- 2- Respetar la antigüedad
- 3- Rechazar Despidos Injustos
- 4- Resolver Conflictos sin Represalias
- 5- Participación del Trabajador en la Solución de Conflictos
- 6- Apoyo y Vigilancia de la Colaborativa de Trabajadores
- 7- Transporte Seguro y Regulado

Ya Basta con el Robo de Sueldo y las Represalias! Pongamos la cabeza en alto! Únete a nosotros!

847-577-0330 (Suburbios); 773-434-5441 (Chicago); 847-693-9817 (Waukegan)

www.chicagoworkerscollaborative.org

EXHIBIT A

EXHIBIT 3

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

Date Filed

13-CA-149591

4/6/15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

Personnel Staffing Group LLC ("MVP") and/or MVP Workforce, LLC ("MVP Workforce") and/or MVP and MVP Workforce as a single employer

b. Tel. No. 312-372-7075

c. Cell No.

f. Fax No.

d. Address (Street, city, state, and ZIP code)

666 Dundee Rd.
suite 201
Northbrook, IL 60062

e. Employer Representative
Carter A. Kofey

Korey Richardson LLC
20 S. Clark St., Ste. 500, 60603

g. e-Mail

h. Number of workers employed
>500

i. Type of Establishment (factory, mine, wholesaler, etc.)
Temporary Staffing Agency

j. Identify principal product or service
Labor

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 1, 3 and 5.

practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

The employer(s) violated subsections 1, 3 and 5 of the Act by: refusing to assign work to persons who engaged in concerted activity for mutual aid and support, by suing persons and an association of persons who engaged in and supported concerted activity and by seeking and securing a TRO against those same persons in response to past concerted activity and to prevent future concerted activity. Charging party engaged in and/or supported the protected activity and is impacted by the retaliation.

The underlying protected activity includes organizing a protest of the employer(s)' working conditions, attending a "job fair" in a concerted manner on or around September 24, 2014 where the employer(s) identified and called out the workers, and other actions aimed at improving working conditions under the employer(s)' control.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Chicago Workers' Collaborative

4a. Address (Street and number, city, state, and ZIP code)

c/o Michael P. Persoon
Despres, Schwartz & Geoghegan, Ltd.
77 W. Washington St., Ste. 711
Chicago, Illinois 60602

4b. Tel. No. 312-372-2511

4c. Cell No. 312-399-5481

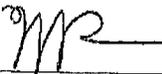
4d. Fax No. 312-372-7391

4e. e-Mail
mpersoon@dsgchicago.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By 
(signature of representative or person making charge)

Michael P. Persoon (attorney)
(Print/type name and title or office, if any)

Tel. No. 312-372-2511

Office, if any, Cell No. 312-399-5481

Fax No. 312-372-7391

e-Mail
mpersoon@dsgchicago.com

Address 77 W. Washington St., Ste. 711, Chicago, IL 60602

April 6, 2015
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case **13-CA-149592** Date Filed **4/6/15**

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Personnel Staffing Group LLC ("MVP") and/or MVP Workforce, LLC ("MVP Workforce")
and/or MVP and MVP Workforce as a single employer

b. Tel. No. 312-372-7075

c. Cell No.

f. Fax No.

d. Address (Street, city, state, and ZIP code)
666 Dundee Rd.
suite 201
Northbrook, IL 60062

e. Employer Representative
Carter A. Korey
Korey Richardson LLC
20 S. Clark St., Ste. 500, 60603

g. e-Mail

h. Number of workers employed
>500

i. Type of Establishment (factory, mine, wholesaler, etc.)
Temporary Staffing Agency

J. Identify principal product or service
Labor

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 1, 3 and 5. _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
The employer(s) violated subsections 1, 3 and 5 of the Act by: refusing to assign work to persons who engaged in concerted activity for mutual aid and support, by suing persons and an association of persons who engaged in and supported concerted activity and by seeking and securing a TRO against those same persons in response to past concerted activity and to prevent future concerted activity. Charging party engaged in and/or supported the protected activity and is impacted by the retaliation.

The underlying protected activity includes organizing a protest of the employer(s)' working conditions, attending a "job fair" in a concerted manner on or around September 24, 2014 where the employer(s) identified and called out the workers, and other actions aimed at improving working conditions under the employer(s)' control.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
Jose Solorzano

4a. Address (Street and number, city, state, and ZIP code)
c/o Michael P. Persoon
Despres, Schwartz & Geoghegan, Ltd.
77 W. Washington St., Ste. 711
Chicago, Illinois 60602

4b. Tel. No. 312-372-2511

4c. Cell No. 312-399-5481

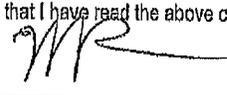
4d. Fax No. 312-372-7391

4e. e-Mail
mpersoon@dsgchicago.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Michael P. Persoon (attorney)
(signature of representative or person making charge) (Printtype name and title or office, if any)

Tel. No. 312-372-2511

Office, if any, Cell No. 312-399-5481

Fax No. 312-372-7391

e-Mail
mpersoon@dsgchicago.com

Address 77 W. Washington St., Ste. 711, Chicago, IL 60602 April 6, 2015 (date)

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
13-CA-149593	4/6/15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Personnel Staffing Group LLC ("MVP") and/or MVP Workforce, LLC ("MVP Workforce")
and/or MVP and MVP Workforce as a single employer

b. Tel. No. 312-372-7075

d. Address (Street, city, state, and ZIP code)
666 Dundee Rd.
suite 201
Northbrook, IL 60062

e. Employer Representative
Carter A. Korey
Korey Richardson LLC
20 S. Clark St., Ste. 500, 60603

f. Fax No.

g. e-Mail

h. Number of workers employed
>500

i. Type of Establishment (factory, mine, wholesaler, etc.)
Temporary Staffing Agency

j. Identify principal product or service
Labor

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (1st subsections) 1, 3 and 5. _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
The employer(s) violated subsections 1, 3 and 5 of the Act by: refusing to assign work to persons who engaged in concerted activity for mutual aid and support, by suing persons and an association of persons who engaged in and supported concerted activity and by seeking and securing a TRO against those same persons in response to past concerted activity and to prevent future concerted activity. Charging party engaged in and/or supported the protected activity and is impacted by the retaliation.

The underlying protected activity includes organizing a protest of the employer(s)' working conditions, attending a "job fair" in a concerted manner on or around September 24, 2014 where the employer(s) identified and called out the workers, and other actions aimed at improving working conditions under the employer(s)' control.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
Isaura Martinez

4a. Address (Street and number, city, state, and ZIP code)
c/o Michael P. Persoon
Despres, Schwartz & Geoghegan, Ltd.
77 W. Washington St., Ste. 711
Chicago, Illinois 60602

4b. Tel. No. 312-372-2511

4c. Cell No. 312-399-5481

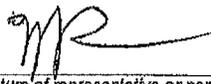
4d. Fax No. 312-372-7391

4e. e-Mail
mpersoon@dsgchicago.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Michael P. Persoon (attorney)
(signature of representative or person making charge) (Print type name and title or office, if any)

Tel. No. 312-372-2511

Office, if any, Cell No. 312-399-5481

Fax No. 312-372-7391

e-Mail
mpersoon@dsgchicago.com

Address 77 W. Washington St., Ste. 711, Chicago, IL 60602

April 6, 2015
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case **13-CA-149594** Date Filed **4/6/15**

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Personnel Staffing Group LLC ("MVP") and/or MVP Workforce, LLC ("MVP Workforce") and/or MVP and MVP Workforce as a single employer		b. Tel. No. 312-372-7075
d. Address (Street, city, state, and ZIP code) 666 Dundee Rd. suite 201 Northbrook, IL 60062		c. Cell No.
e. Employer Representative Carter A. Korey Korey Richardson LLC 20 S. Clark St., Ste. 500, 60603		f. Fax No.
i. Type of Establishment (factory, mine, wholesaler, etc.) Temporary Staffing Agency	j. Identify principal product or service Labor	g. e-Mail
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 1, 3 and 5. _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
 The employer(s) violated subsections 1, 3 and 5 of the Act by: refusing to assign work to persons who engaged in concerted activity for mutual aid and support, by suing persons and an association of persons who engaged in and supported concerted activity and by seeking and securing a TRO against those same persons in response to past concerted activity and to prevent future concerted activity. Charging party engaged in and/or supported the protected activity and is impacted by the retaliation.

The underlying protected activity includes organizing a protest of the employer(s)' working conditions, attending a "job fair" in a concerted manner on or around September 24, 2014 where the employer(s) identified and called out the workers, and other actions aimed at improving working conditions under the employer(s)' control.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

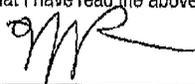
Marcella Gallegos

4a. Address (Street and number, city, state, and ZIP code) c/o Michael P. Persoon Despres, Schwartz & Geoghegan, Ltd. 77 W. Washington St., Ste. 711 Chicago, Illinois 60602		4b. Tel. No. 312-372-2511
		4c. Cell No. 312-399-5481
		4d. Fax No. 312-372-7391
		4e. e-Mail mpersoon@dsgchicago.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Michael P. Persoon (attorney)
(signature of representative or person making charge) (Printtype name and title or office, if any)

Tel. No. 312-372-2511
Office, if any, Cell No. 312-399-5481
Fax No. 312-372-7391
e-Mail mpersoon@dsgchicago.com

Address **77 W. Washington St., Ste. 711, Chicago, IL 60602** April 6, 2015
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
13-CA-149596	4/6/15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Personnel Staffing Group LLC ("MVP") and/or MVP Workforce, LLC ("MVP Workforce")
and/or MVP and MVP Workforce as a single employer

b. Tel. No. 312-372-7075

c. Cell No.

f. Fax No.

d. Address (Street, city, state, and ZIP code)

666 Dundee Rd.
suite 201
Northbrook, IL 60062

e. Employer Representative
Carter A. Kofey

Korey Richardson LLC
20 S. Clark St., Ste. 500, 60603

g. e-Mail

h. Number of workers employed
>500

i. Type of Establishment (factory, mine, wholesaler, etc.).
Temporary Staffing Agency

j. Identify principal product or service
Labor

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 1, 3 and 5. _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
The employer(s) violated subsections 1, 3 and 5 of the Act by: refusing to assign work to persons who engaged in concerted activity for mutual aid and support, by suing persons and an association of persons who engaged in and supported concerted activity and by seeking and securing a TRO against those same persons in response to past concerted activity and to prevent future concerted activity. Charging party engaged in and/or supported the protected activity and is impacted by the retaliation.

The underlying protected activity includes organizing a protest of the employer(s)' working conditions, attending a "job fair" in a concerted manner on or around September 24, 2014 where the employer(s) identified and called out the workers, and other actions aimed at improving working conditions under the employer(s)' control.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Dora Iara

4a. Address (Street and number, city, state, and ZIP code)

c/o Michael P. Persoon
Despres, Schwartz & Geoghegan, Ltd.
77 W. Washington St., Ste. 711
Chicago, Illinois 60602

4b. Tel. No. 312-372-2511

4c. Cell No. 312-399-5481

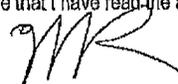
4d. Fax No. 312-372-7391

4e. e-Mail
mpersoon@dsgchicago.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.



By _____
(signature of representative or person making charge)

Michael P. Persoon (attorney)
(Printtype name and title or office, if any)

Tel. No. 312-372-2511

Office, if any, Cell No.
312-399-5481

Fax No. 312-372-7391

e-Mail
mpersoon@dsgchicago.com

Address 77 W. Washington St., Ste. 711, Chicago, IL 60602

April 6, 2015
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT 4

Richard J. Goldman, President
Mercury Plastics
4535 W. Fullerton Ave.
Chicago, IL 60639

March 24, 2015

Dear Mr. Goldman,

We hope this letter finds you well and that it begins a new, mutually beneficial relationship with our community. Right now we believe that relationship is out of balance. Mercury Plastics supplies products for many display campaigns at stores where we shop. Yet although these displays market to us as customers, Mercury uses a segregationist employment model that shuts out African-Americans and targets Mexican immigrant workers through two discriminatory, abusive suburban-based temporary agencies, Flexible Staffing in Melrose Park and MVP in Cicero/Elmwood Park.

On top of this, Mercury has received indirect and direct TIF support, including a Small Business Improvement Fund (SBIF) grant from the City. In effect, westsiders are seeing some of our taxes diverted to help fund discrimination against African-Americans! It also means money flowing to suburban agencies who pay only minimum wage and lock workers into 'perma-temp' status rather than benefiting neighborhood residents of all races with decent jobs.

Of course, these issues of segregation/discrimination and predatory jobs are not unique to Mercury, but pervasive throughout westside TIF districts—a situation that we are protesting today.

Like everybody, westsiders need food, housing, and the chance to contribute to our communities. To meet these needs, we ask that our rights to equal access to work, living wages, and fair treatment on the job be respected. We feel frustrated when we are denied these.

We would like to meet to talk about what's happening and request some changes. Because these issues are widespread, we believe your direct involvement as top leader is key.

We appreciate your time to help resolve these issues. Please call Mr. Charles Perry of Westside Health Authority at (773) 813-3025 to arrange a meeting.

Sincerely,

Members and Allies of the Westside Health Authority and the South Austin Coalition.

Charles Perry
Silot

Chris White
Sel. Armstrong

Rob MS

Eric Redmond
Bob Vondrasek

Beraldine Benson

Julie Kore

William E. ...
Christopher Stewart

Julia Trauma

George Davis

EXHIBIT 5



KOREY
RICHARDSON LLC

November 4, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Geraldine Benson v. Personnel Staffing Group, LLC
NLRB Case No. 13-CA-162002**

Dear Ms. Schlabowske:

Please be advised that I represent Personnel Staffing Group, LLC d/b/a Most Valuable Personnel (“PSG” and/or “Respondent”) in this matter. Please direct all correspondence, questionnaires, and information requests to the attention of the undersigned.

Geraldine Benson (“Complainant”) has asserted meritless claims against Respondent. Complainant alleges that Respondent filed a lawsuit against Westside Health Authority (“WHA”) and the South Austin Coalition Community Council (“SACCC”) in retaliation for engaging in and/or supported protected concerted activities. Complainant further claims that the lawsuit is preempted by the NLRA and violates the NLRA. Complainant then makes the vague allegation that she was retaliated against by Respondent.

Initially, the litigation referenced by Complainant was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because WHA and SACCC, through their agents, sent a correspondence to one of Respondent’s clients deliberately disparaging Respondent and its services, an act which is not protected under the NLRA. Complainant’s Charge is meritless, and Respondent requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. On or about March 24, 2015, WHA and SACCC, through their agents, sent a correspondence to one of Respondent’s clients. (A copy of the March 24, 2015 correspondence is attached hereto as Exhibit A). Within the correspondence, WHA and SACCC stated that Respondent’s client uses a “segregationist employment model that shuts out African-Americans and targets Mexican immigrant workers through two discriminatory, abusive suburban-based temporary agencies, Flexible Staffing in Melrose Park and MVP in Cicero/Elmwood Park.” (See Ex. A). WHA and SACCC went on to state that Respondent pays “only minimum wage and lock[s] workers into ‘perma-temp’ status rather than benefiting neighborhood residents of all races with decent jobs.” (*Id.*). In total, the correspondence: (a)

disparaged Respondent; (b) accused Respondent of being “abusive” and “discriminatory”; (c) claimed that Respondent pays only minimum wage and locks employees into “perma-temp” status, thereby failing to provide employees with “decent” jobs; and (d) accuses Respondent and its client of engaging in “segregation/discrimination and predatory jobs.” (*Id.*). Respondent denies all of these accusations.

As a result of the defamatory statements contained in WHA and SACCC’s correspondence to Respondent’s client, on April 16, 2015, Respondent filed a Complaint within the Circuit Court of Cook County, Illinois alleging that WHA and SACCC defamed Respondent. That case is currently pending as *Personnel Staffing Group, LLC v. Westside Health Authority*, Case No. 2015 L 003976 (the “State Court Lawsuit”).

Complainant alleges that she signed the correspondence at issue in the State Court Lawsuit, and makes a vague allegation that she was retaliated against, but fails to allege how or when this allegedly occurred. Respondent has records of one former employee by the name of Geraldine Benson; however, this employee worked for Respondent from approximately mid-September 2013 until October 2013. (A copy of Ms. Benson’s Personnel File is attached hereto as Exhibit B). Respondent does not have any record of any Geraldine Benson seeking any job assignments from Respondent since October 2013. (Ex. B).

II. WHA and SACCC Are Not Labor Organizations

Complainant fails to identify the alleged manner in which Respondent violated any *employees’* rights to self-organize or assist a labor organization, or how Respondent discriminated against any *employees* to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that WHA and SACCC are not labor organizations under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3) by violating employees’ rights to assist labor organizations or discouraging membership in a labor organization.

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 Act; 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 Act 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.3 354, 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.*

WHA is not a labor organization “dealing with” employers. Initially, WHA identifies itself as a “501(c)3 [sic] 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/> (last accessed Nov. 2, 2015), attached hereto as Exhibit C). 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, WHA purports to provide community assistance to those on Chicago’s west side. Complainant does not “deal with” employers. Nor, to Respondent’s knowledge, does SACCC. These 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). Accordingly, to the extent Complainant’s claim is based on her assistance of SACCC and/or WHA, it does not fall within the confines of the NLRA and must be dismissed.

III. Complainant Is Not An Employee Of Respondent

The NLRA provides protections to “employees” as that term is defined in Section 2(3) of the Act. See 29 U.S.C. § 152(3). This includes employees of an employer and even former employees “whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.” *Id.* Additionally, employees who are supervisors are excluded from this list. *Id.* Section 7 of the NLRA guarantees certain rights to employees, including the right to “engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.” 29 U.S.C. § 157. The Fourth Circuit, in *Halstead Metal Products, a Div. of Halstead Industries, Inc. v. NLRB*, explained:

[A]n employer only violates the Act if the individuals against whom he discriminates are employees for purposes of the Act. In other words, unless the workers who protest are employees, their concerted activity is not protected by the Act. . . . It is undisputed that Hazelwood voluntarily resigned on August 16, 1988, because he was dissatisfied with the proposed work schedule. Because

Hazelwood actually resigned, he was not protected by the Act from future discrimination, even if the discrimination arose from participation in concerted activities with employees who were protected by the Act.

940 F.2d 66, 70 (4th Cir. 1991). Indeed, it is clear that former employees lose “their status as NLRA ‘employees’ when they left work for reasons other than a labor dispute or unfair labor practice.” *Merk v. Jewel Companies, Inc.*, 848 F.2d 761, 765 (7th Cir. 1988); *cf. Choc-Ola Bottlers, Inc. v. NLRB*, 478 F.2d 461, 464-65 (7th Cir. 1973) (explaining that an employee who was discharged for cause was not an “employee” under the NLRA). Further, both the NLRB and Seventh Circuit have held that “[e]mployees who quit or abandon their job lose their employee status because they no longer have the requisite expectation of future employment.” *Montgomery Ward & Co., Inc. v. NLRB*, 668 F.2d 291, 299-300 (7th Cir. 1981) (citing *Whiting Corp. v. NLRB*, 200 F.2d 43 (7th Cir. 1952), *John A. Thomas Crane & Trucking Co.*, 224 NLRB 214 (1976), *Roy Lotspeich Publishing Co.*, 204 NLRB 517 (1973) and *Atlantic Coast Fisheries*, 183 NLRB 921 (1970)).

Complainant is not an employee of Respondent. Complainant is a former employee of Respondent, who last sought a job assignment from Respondent in October 2013. (Ex. B). Complainant voluntarily left her employment, and did not do so as a result of a labor dispute. Accordingly, Complainant is not an “employee” under Section 7, and to the extent she is claiming she engaged in protected concerted activity as an employee, her claims fall outside the confines of the NLRA.

IV. Complainant Did Not Engage In Any Protected Concerted Activity

Even if Complainant had Section 7 rights, Complainant did not engage in any protected concerted activities. Section 7 of the NLRA guarantees certain rights to employees, including the right to “engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.” 29 U.S.C. § 157. The correspondence, sent to Respondent’s client on an issue that SACCC and WHA *never* raised with Respondent, is not a concerted activity for the purpose of mutual aid or protection. Instead, the correspondence had the sole purpose of seeking to damage a business relationship between Respondent and its client, a tortious act which is not governed by the NLRA.

Furthermore, even if the correspondence was a concerted activity, there are limits to employees’ rights under Section 7. Under the Supreme Court decision in *NLRB v. Local 1229, IBEW*, 346 U.S. 464 (1953), employees lose the protection of the NLRA where they engage in acts that constitute “flagrant disloyalty and a public disparagement of the Employer’s product and services.” *Giuffre Medical Center*, Cas No. 4-CA-14069, 1984 WL 47538 (N.L.R.B.G.C. 1984) (quoting *American Arbitration Ass’n*, 233 NLRB 71 (1977)). Where employees – or in this case, a private third party entity – makes statements that disparage an employer’s products and services, the communications are not protected by Section 7. *Id.*

In the present instance, Respondent is a temporary labor service agency that provides temporary labor services to third party clients. SACCC and WHA alleged that Respondent does so in a

manner that is abusive and is discriminatory. SACCC and WHA alleged that Respondent fails to provide its employees – one of the essential elements of Respondent’s services – with decent jobs, and actively abuses and discriminates against those employees. The correspondence, intentionally sent to Respondent’s client, was clearly meant to disparage Respondent and to interfere with Respondent’s business relationship. This correspondence had nothing to do with a labor dispute, especially given that neither SACCC nor WHA (or Complainant) *ever* raised these issues to Respondent. Accordingly, it is clear that the correspondence is not protected under Section 7. *Id.* (“Moreover, the relationship between the attacks and the labor dispute was tenuous at best, and since it is obvious from the tone and content of the leaflet that the intention was to harass, ridicule and publicly disparage the Employer, rather than to publicize the labor dispute, the leaflet was considered outside the protection of the Act.”). To the extent Complainant participated in the sending and publication of the correspondence, her actions are also not protected under Section 7.

V. The Filing Of Respondent’s Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson’s Restaurant’s Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its State Court Lawsuit in the Circuit Court of Cook County, Illinois against two organizations, neither of which are not employees of Respondent. None of Respondent’s employees are named in the suit. Complainant is not named in the suit. Furthermore, Respondent does not seek redress for any actions by Respondent’s employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by SACCC and WHA.

Under *Bill Johnson’s Restaurants*, only baseless litigation with the intent of “retaliating against an employee for the exercise of rights protected by § 7 of the NLRA” is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson’s Restaurants*, 461 U.S. at 748. Respondent has a reasonable basis for the filing of its State Court Lawsuit against Respondent. *See BE & K Const. Co.*, 536 U.S. at 530. SACCC and WHA have defamed Respondent, as clearly alleged in the State Court Lawsuit, and Respondent is genuinely seeking redress from the harms inflicted by SACCC and WHA through the publication of their defamatory correspondent to one of Respondent’s clients.

Furthermore, under established Supreme Court precedent, even if SACCC and WHA were labor organizations with rights under the NLRA, Respondent has the right to seek redress from wrongs as a result of the defamation by SACCC and WHA. Complainant has established and put forth no evidence that Respondent's State Court Lawsuit is meritless or filed for a retaliatory motive. Accordingly, Respondent's State Court Lawsuit is not an unfair labor practice under Section 8(a)(1) or (3) of the NLRA and *Bill Johnson's Restaurants*.

VI. Respondent's State Court Lawsuit Is Not Preempted By The NLRA

Respondent's State Court Lawsuit is clearly not preempted by the NLRA. The Supreme Court, in *San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon*, found that litigation is not preempted where the "regulated conduct touche[s] interests so deeply rooted in local feeling and responsibility," because the Supreme Court could not infer that Congress deprived the States of their jurisdiction to act. 359 U.S. 236, 244 (1959). Following *Garmon*, the Supreme Court decided *Linn v. United Plant Guard Workers of America, Local 114*, in ruling that a defamation suit in a labor dispute was not preempted by the NLRA. 383 U.S. 53 (1966). In the context of a labor dispute, the Supreme Court recognized that "although the Board tolerates intemperate, abusive and inaccurate statements made by the union, . . . [the NLRA does not give] either party license to injure the other intentionally by circulating defamatory or insulting material known to be false." *Id.* at 61. Further, the Supreme Court explained that the injury a defamatory statement might cause has no relevance to the NLRB's function, and that the NLRB cannot remedy defamation. *Id.* at 63-64. In addition, the Supreme Court recognized that "state remedies have been designed to compensate the victim and enable him to vindicate his reputation." *Id.* For that reason, the Supreme Court found that defamation cases, even in the context of a labor dispute, can fall within the *Garmon* exception to the preemption doctrine.

Once again, Respondent's State Court Lawsuit does not fall within the confines of the NLRA – it is not a case involving a labor dispute, it is not a case involving the employer-employee relationship, and it is not a case involving employees working together for mutual aid or protection. Respondent's State Court Lawsuit involves Respondent, a temporary labor service agency, and two third party independent organizations which intentionally published defamatory remarks about Respondent to one of Respondent's clients. The wrongful acts committed by SACCC and WHA are not protected by the NLRA and do not implicate the NLRA in any manner. Therefore, Respondent's State Court Lawsuit is not preempted by the NLRA.

Furthermore, even if SACCC and WHA made their statements in the context of a labor dispute, they did so with malice and/or reckless indifference to Respondent's rights and reputation. SACCC and WHA allege that Respondent uses a segregationist employment model, is abusive, and is discriminatory. Respondent vehemently denies these unfounded statements. Furthermore, there has never been a determination by any court or agency that Respondent abuses and/or discriminates against its employees, and SACCC and WHA's statements to the contrary, that Respondent abuses and discriminates against its employees, is entirely unfounded and defamatory. Yet SACCC and WHA made those exact allegations, to Respondent's client, without investigation and without any consideration for Respondent's rights. SACCC and WHA do not provide "proof" of its allegations in their correspondence. Instead, SACCC and WHA

sent an inflammatory and defamatory correspondence to one of Respondent's clients in an effort to damage Respondent's relationship with its client. SACCC and WHA did so, and discovery will prove, with the intent to harm Respondent's business and reputation with its client, and without regard to the falsity of its statements. As a result, even in the context of a labor dispute (which Respondent contests), Respondent's State Court Lawsuit is not preempted.

For these reasons, Respondent respectfully requests that Complainant's Charge be dismissed in its entirety.

VII. Respondent Did Not Retaliate Against Complainant

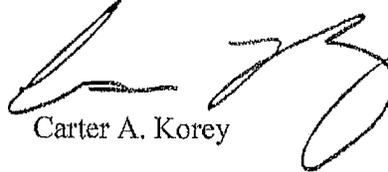
Complainant makes the general conclusory allegation, without any factual allegations, that she was retaliated against. Without further details, Respondent cannot respond to Complainant's bare allegation.

However, Respondent has not retaliated in any manner against Complainant. Complainant was a former employee of Respondent, who left her job assignment with Respondent in October 2013. (Ex. B). To Respondent's knowledge, Complainant has never again sought a job assignment with Respondent. Further, Complainant is not named in the State Court Litigation. Accordingly, Respondent cannot have retaliated against Complainant in any manner.

For all of the foregoing reasons, Respondent requests that Complainant's Charge be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC



Carter A. Korey

cc: Personnel Staffing Group, LLC

Richard J. Goldman, President
Mercury Plastics
4535 W. Fullerton Ave.
Chicago, IL 60639

March 24, 2015

Dear Mr. Goldman,

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Of course, these issues of segregation/discrimination and predatory jobs are not unique to Mercury, but pervasive throughout westside TIF districts—a situation that we are protesting today.

Like everybody, westsiders need food, housing, and the chance to contribute to our communities. To meet these needs, we ask that our rights to equal access to work, living wages, and fair treatment on the job be respected. We feel frustrated when we are denied these.

We would like to meet to talk about what's happening and request some changes. Because these issues are widespread, we believe your direct involvement as top leader is key.

We appreciate your time to help resolve these issues. Please call Mr. Charles Perry of Westside Health Authority at (773) 813-3025 to arrange a meeting.

Sincerely,

Members and Allies of the Westside Health Authority and the South Austin Coalition.

Charles Perry
S. Lot

Chris White
Sel. Armstrong

P. B. #105

Eric Redmond

Reverend Bernice

Bob Vondrasek

William E. Benson

Julie Kase

Christopher Stewart

Julia Tavares

George Davis

BEN603



EMPLOYMENT APPLICATION/ENGLISH

- Location: Cicero Prospect Heights
- Elmwood Park Waukegan
- Hanover Park Kenosha
- Joliet Milwaukee

Most Valuable Personnel
a Division of Personnel Staffing Group, LLC

Last Name: Benson First Name: Geraldine
Apellido Nombre

Address: 2121 OAK Park Ave
Dirección
City: Berwyn State: IL Zip Code: 60402
Ciudad Estado Código Postal

Phone Number: (773) 982-1166 Alternate Number: _____
Teléfono Otro Teléfono

Social Security Number: [REDACTED] Are you over 18? YES
Numero de Seguro ¿Es usted mayor de 18 años?

What shift/hours are you available to work? 2nd
¿Que turno/horario usted esta buscando para trabajar?

Previous Employment: Trabajo anterior

Company Name: Home Depot
Nombre de la compañía

Address: 1232 W North Ave
Dirección

Phone Number: (773) 486-9200 Supervisor's Name: Brody
Teléfono Nombre del supervisor

May we contact your previous employer? YES Start Date: 2-15-1999 End Date: 1-26-2011
Podemos contactar a su empleador anterior Fecha de comienzo Fecha en que termino

Job Duties: Cashier
Funciones de trabajo

Company Name: _____
Nombre de la compañía

Address: _____
Dirección

Phone Number: _____ Supervisor's Name: _____
Teléfono Nombre del supervisor

May we contact your previous employer? _____ Start Date: _____ End Date: _____
Podemos contactar a su empleador anterior Fecha de comienzo Fecha en que termino

Job Duties: _____
Funciones de trabajo

Do you have your own transportation to/from work? NO
¿Tiene usted su propia transportación para ir/venir del trabajo?

I agree to conform to the rules and regulations of Most Valuable Personnel, hereinafter referred to as MVP, and understand that my employment may be terminated for any cause at any time. If injured during work I am to report accidents to MVP. Work-related injuries or illness are subject to be tested for the presence of drugs and/or alcohol. Refusal to be tested will be reason for dismissal. I understand that I am applying for temporary work assignments with MVP, and MVP is the "employer of record". I authorize MVP to verify my information for employment. I authorize MVP to check my information for any criminal activity. I authorize MVP to administer a drug screen prior to employment. I have read and understand this application and the above statements.

Yo estoy de acuerdo en ajustarme a las reglas y regulaciones de Most Valuable Personnel, que se referirá en todo el contexto como MVP, y entiendo que mi empleo puede terminar por cualquier causa. Si me lastime durante horas de trabajo debo de reportar cualquier accidente a MVP. Accidentes o enfermedades relacionados con el trabajo son sujetos a ser examinados para detectar la presencia de drogas y/o alcohol. Yo entiendo que estoy aplicando para una asignación de trabajo temporal con MVP, y MVP es el empleador del registro. Yo autorizo a MVP a verificar mi información para empleo, verificar mi información por alguna actividad criminal, y a administrar una prueba de drogas antes de emplearme si es necesario. Yo lei y entiendo esta aplicación y las declaraciones mencionadas arriba.

Employee Signature: Geraldine Benson Date: 9-9-2013
Firma del empleado Fecha

Can you speak or read English?
¿Hablas o lees Ingles?

Yes

How fluently?

100%

¿Cuanto por ciento (ejemplo 20%, 60%, 100%)?

Skill Evaluation, please mark an "X" at your skills

Evaluación de experiencia, ponga una "X" en lo que tiene de experiencia

Warehouse

- Assembly (Ensamblar)
- Book Bindery (Ensamblando Libros/Carpetas)
- Inventory (Inventario)
- Picking (Seleccionador)
- Packing (Empacador)
- Shipping/Receiving (Recibiendo/Mandando Ordenes)
- Forklift, please specify (Maquina de Monte Carga)
 - Stand-Up Sit Down
 - Cherry Picker Slip Sheet
 - Clamp Turret
- Forklift Certified? Yes No
- Tienes licencia de monte carga? SI No

Manufacturing

- Machine Operator (Operador de Maquina)
- Specify Type(s) _____
- Que Tipo(s) _____
- Punch Press (Maquina de Presión)
- Set-Up Experience (Armar/Montar o Programar Maquinas)

Clerical

- Receptionist (Recepcionista)
- Secretarial (Secretaria)
- Data Entry (Entrada de Datos)
- Customer Service (Servicio al Cliente)
- Typing (Teclado) Speed (PPM) _____
- Computer Skills (Computación)
- Specify Software _____
- Que Tipo de Programas _____

Food Service:

- Cook (Cocinar)
- Dish Washer (Lavaplatos)
- Server (Servidor)

House keeping/Cleaning

- Office (Oficinas)
- Hotel (Hoteles)
- Janitorial (Limpieza)

Electronics

- Soldering (Soldar Cautín)
- Read Schematics (Leer Esquemático Electrónico)
- Wiring Assembly (Ensamblar Cables Electrónico o Alambres)
- Blue Print Reading (Leer Planos)

Other Skills

- Carpentry (Carpintero)
- Cashier (Cajero)
- Driver (Conductor)
- Type of Driver's License (Que clase de licencia)
- Security Guard (Guardia de Seguridad)
- Sewing (Maquina de Coser)
- Welding (Soldador con Arco Eléctrico o con Soplete)
- Mechanic, Automobile (Mecánico)
- Maintenance, Building (Mantenimiento)
- Lifting Capabilities _____
- Capacidad para levantar _____

POLICIES AND PROCEDURES

1. All employees are responsible for learning and complying with all safety and health regulations that are applicable to their work.
2. All employees shall wear personal protective equipment when required.
3. Employees exposed to flying particles, chips, etc. shall wear eye protection.
4. Employees shall look presentable in clean and appropriate clothing. No shorts, sleeveless shirts, revealing clothing or offensive logos on any part of clothing.
5. Employees may not wear jewelry to any job site other than a wedding band.
6. Employees will report to their dispatcher at their scheduled time, work their set hours, and be on time for all assignments.
7. Employees who walk off a job assignment with no prior authorization will be written up for first offense and terminated for second offense.
8. Horse playing, fighting and other unsafe acts of behavior are prohibited.
9. Employees shall not be insubordinate to any personnel or their assigned supervisor. Any conflicts or situations with a supervisor should be reported to your employer immediately.
10. Employees shall report any potential unsafe health hazards to their supervisors.
11. Proper respiratory protection is necessary when working with solvents, paints, chemicals, or dust that may cause eye irritation. Review MSD (Material Safety Data) Sheets.
12. Only trained and qualified personnel shall operate equipment and machinery. Work given outside of your scope should be reported to a supervisor for reassignment.
13. Employees shall report all accidents and incidents that have occurred on the job, immediately to the supervisor, including minor first aid injuries.
14. Any employee under drugs or any intoxicating influences shall not be allowed on the job and is subject to immediate termination.
15. Any changes made by the customer at the job site that are different than the initial set up by the dispatcher, such as wage changes, must be reported and approved by dispatch management.
16. Employees shall come in person to pick up their payroll check. Do not send relatives or friends. Employee ID required to pick up check.
17. Employees shall not have any personal cell phones inside client buildings make personal calls or have visitors while working at any jobsite.

Employee Name Geraldine Benson Date 9-9-2013

Employee Signature Geraldine Benson

CONSENT AND RELEASE FORM FOR DRUG AND ALCOHOL POLICY

To protect the health and safety of all our employees, Most Valuable Personnel enforces a "Drug/Alcohol Policy" which prohibits the possession, sale, use or being under the influence of alcohol or drugs during company time, other than the use of prescribed drugs. Violation of this policy will subject you to immediate dismissal.

- 1) I understand as part of being employed by Most Valuable Personnel that I may be subject to drug and alcohol testing in the event that I am involved in a job-related accident that requires medical attention.
- 2) I understand as an employee of Most Valuable Personnel, I may be required to be drug and alcohol tested in the event that I am involved in a job-related accident, and that I may be suspended until the results of the test are known.
- 3) Any work-related injuries requiring a doctor's attention will be drug and alcohol screened. I understand that a positive test will exonerate Most Valuable Personnel and its workers compensation carrier from any liability as a result of said accident as well as possible termination of employment.
- 4) Any employee whose test indicates the presence of any controlled substances regardless of the amount (unless prescribed in writing by a medical doctor) shall be terminated for a serious misconduct of company policy.
- 5) Any employee whose blood alcohol level tests turns out to be .05% or higher shall be deemed under the influence of alcohol and will be terminated for a serious misconduct of a company policy.
- 6) I will hold the doctor, hospital staff, Most Valuable Personnel, harmless for the taking of any and all samples and testing.
- 7) I understand that failure or refusal to cooperate with any of the above-prescribed procedures for any reason shall constitute serious misconduct of the policies of Most Valuable Personnel, and I will be subject to immediate termination of employment.

I understand that submission to a drug/alcohol test in accordance with established policy is a condition of employment with Most Valuable Personnel, and consent to provide a urine and/or blood specimen for drug and/or alcohol testing as provided above when requested by Most Valuable Personnel. I also consent to the release of the results of this testing to a representative of Most Valuable Personnel

Employee Name Geraldine Benson Date 9-9-2013

Employee Signature Geraldine Benson

SEXUAL AND OTHER UNLAWFUL HARASSMENT POLICY

We are committed to providing a work environment that is free of discrimination and unlawful harassment. Actions, words, jokes, or comments based on an individual's sex, race, ethnicity, religion or any other legally protected characteristics will not be tolerated. Harassment (both overt and subtle) is a form of employee misconduct that is demeaning to another person, undermines the integrity of the employment relationship, and is strictly prohibited.

Any employee who wants to report an incident of harassment should promptly report the matter to his/her manager. Employees can raise concerns and make reports without fear of reprisal. Any manager who becomes aware of possible sexual or other unlawful harassment should handle the matter in a timely and confidential manner.

Anyone engaging in harassment will be subject to disciplinary action, up to and including termination of employment.

Employee Name Geraldine Benson Date 9-9-2013

Employee Signature Geraldine Benson

RELEASE OF CRIMINAL RECORDS

I, the undersigned, do hereby authorize Most Valuable Personnel to examine any and all criminal records and arrests on file in the United States of America. In doing so, I understand that I am waiving my right of confidentiality concerning my criminal history.

Print Applicant's Full Name: Geraldine Benson

ID
Driver's License Number: [REDACTED]

Social Security Number: [REDACTED]

Street Address: 2121 OAK Park Ave

City: Berwyn State: IL Zip Code: 60402

Date of Release (today): 9-9-2013

Signature: Geraldine Benson

GUIDELINES TO GOOD MANUFACTURING PRACTICES (GMP)

GMP's are regulations that are enforced by the Food and Drug Administration. Personnel in contact with product or packaging are required to be clean, healthy, and appropriately dressed so that they will not adversely affect the finished products.

Note: EVERY EMPLOYEE WILL HAVE THEIR MVP IDENTIFICATION (I.D.) ON THEM AND PROPERLY DISPLAYED THROUGHOUT THEIR SCHEDULED SHIFT.

1. Appropriate clothing for the food processing environment:
 - A. Long Pants
 - B. Knee length skirts with hose.
 - C. Shirts/Blouses, must have a half sleeve (No sleeveless shirts or tank tops), and be free of glitter, beads, fringes, etc.
 - D. Socks must be worn at all times with closed shoes. (High heels, open-toed, clogs, or sandals are prohibited.)
 - E. Clothing which is free of printed messages or images which are obscene or offensive.
2. Wash hands prior to work and after each visit to the locker room, restroom, or lunchroom.
3. Do not handle products when hands are cut or infected; if wearing a band-aid, gloves must be worn.
4. Be clean shaven. Beard nets must be worn when sideburns extend below the ear and when mustaches extend below the corners of the upper lip. Beards must be trimmed and neat and beard covers must be worn at all times. One day growth requires a beard cover.
5. Company issued hairnets must be worn properly at all times to ensure that all hair is covered.
6. Fingernails are to be trimmed to the end of your finger and clean. False eyelashes, false fingernails and fingernail polish is STRICTLY PROHIBITED.
7. Keep hands away from mouth, nose, ears, and scalp.
8. Candy, chewing gum, tobacco, cigarettes, etc. are not allowed in the production area at any time. The eating of ingredients and/or finished products in the production areas is not allowed. (includes the warehouse and coolers)
9. Jewelry may not be worn (Rings, watches, earrings, pins, brooches, etc.) Body piercing to the tongue, eyebrows, nose, lips, etc. is STRICTLY PROHIBITED.
10. Pen, pencils, eyeglasses, etc. may not be clipped to the front of the shirt or carried in pockets above the waist.
11. Brushes, scrapers, or other implements to be used with or that will come in contact with food, may not be carried in pockets nor should these items be placed on unsanitary surfaces, such as ledges, racks, stairs, etc.
12. Keep all utensils clean and in good condition; these items should not be placed on the floor or on unclean surfaces.
13. Do not place power cords, guards, tools, equipment parts, etc. on product zones or on the floor.
14. Do not walk, sit, or stand on products contact zones or ingredient containers, even on non-production days.
15. Packaging material should be treated as though they were an ingredient.
16. Lunches should not be brought into the production areas. Store your lunches in the refrigerator provided.
17. Do not clean floors or uniforms with air hoses. Only approved safety blow gun may be used to clean specific equipment and the operator must wear approved safety goggles and clear the area of people not wearing eye protection.
18. Avoid creating a mess when handling ingredients. If spillage occurs, clean up the area immediately, as time permits. Continually keep work areas clean, neat and orderly.
19. Do not use ingredients containers for catch pans under leaks. Ingredient containers may not be used for any purpose other than to contain the ingredient intended for storage within the container.
20. Keep all outside doors closed when not in use. Do not prop open self-closing doors.
21. Any evidence of fruit flies, cockroaches, flour beetles, birds, or rodents must be reported immediately.
22. Lubrication of machinery must not be excessive to the extent that it may enter or drop into the production zone. Grease fittings should be wiped off after greasing.
23. Immediately report any loose paint, rust, oil leaks and condensation over the product zones.
24. Catch pans must be in place at all times to facilitate sanitation at the end of the shift and to ensure neat work areas.
25. Glass of any kind is prohibited in the manufacturing area.

I understand and will comply with these practices. I also understand that failure to do so may result in termination of my employment.

Employee Name Geraldine Benson Date 9-9-2013

Employee Signature Geraldine Benson

REPORTING OF WORK RELATED INJURIES AND INCIDENTS

PURPOSE: To ensure the prompt reporting of all work-related injuries and incidents that occur while a MVP Core or Service Employee is working for MVP Staffing.

Person(s) Responsible: All MVP Core and Service Employees

Procedure: When injured on the job or when you have knowledge of a work-related injury or incident it is mandatory that the injury and/or incident be reported **immediately** to a MVP Representative. The injury and/or incident should be reported in person, if at all possible.

Any employee who fails to report a work related injury or incident to a MVP Representative will be subject to suspension without pay for three consecutive business days (or three consecutive scheduled days). Additionally, any MVP employee who is witness to or aware of an injury and/or incident to another MVP employee and does not report it immediately will be subject to suspension without pay for three business days.

Please sign this form below to indicate you understand this policy.

Employee Name Geraldine Benson Date 9-9-2013

Employee Signature Geraldine Benson

APPLICATION CERTIFICATION

I understand my employment may be contingent upon the results of a background investigation. I am aware any omission, falsification, misstatement or misrepresentation could lead to the basis for my disqualification as an applicant or my dismissal from Most Valuable Personnel, hereinafter referred to as MVP.

I am aware any and all documents or information (including this application) submitted to MVP may be subject to Public Records Law with the exception of certain personal information, which may be exempted under state law.

I further understand I may be required to take drug testing during the term of my employment with MVP.

I understand the use of alcohol by an employee is prohibited during work or while on the premises, whether paid or unpaid, in any work area within MVP or any client of MVP.

I understand the use of or possession of illegal drugs by employees is prohibited at any time, whether on or off duty.

I understand that employees are required to notify their immediate supervisor prior to or at the start of their work shift if they are taking prescription medicine, or other medication, which may impair their normal work responsibilities.

I understand my continued employment may be contingent upon the results of medical or psychological examinations, which I may be required to take during the term of my employment.

I understand and agree my acceptance for employment does not offer or guarantee any proprietary rights for continued employment.

I agree to conform to the rules, regulations and orders as set forth by MVP and acknowledge those rules, regulations, and orders may be changed, interpreted, withdrawn or added to by MVP, at their discretion, at any time and without any prior notice to me.

Employee Name Geraldine Benson Date 9-9-2013

Employee Signature Geraldine Benson

CONTACT MVP AFTER COMPLETION OF WORK ASSIGNMENT

After completion of work assignment, Employee hereby agrees to keep in constant contact with MVP (at least once a week) in order to notify MVP as to whether they are available to take on a new work assignment.

Employee's failure to keep in constant contact with MVP (at least once a week) after completion of a work assignment may result in suspension of unemployment benefits, if any, by the Illinois Department of Employment Security.

By signing below, Employee hereby states that he/she has read and fully understands this policy.

Employee Name: Geraldine Benson

Employee Signature: Geraldine Benson

Date: 9-9-2013

Form W-4 (2013)

Purpose. Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

Exemption from withholding. If you are exempt, complete only lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2013 expires February 17, 2014. See Pub. 505, Tax Withholding and Estimated Tax.

Note. If another person can claim you as a dependent on his or her tax return, you cannot claim exemption from withholding if your income exceeds \$1,000 and includes more than \$360 of unearned income (for example, interest and dividends).

Basic instructions. If you are not exempt, complete the **Personal Allowances Worksheet** below. The worksheets on page 2 further adjust your withholding allowances based on itemized deductions, certain credits, adjustments to income, or two-earners/multiple jobs situations.

Complete all worksheets that apply. However, you may claim fewer (or zero) allowances. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

Head of household. Generally, you can claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See Pub. 501, Exemptions, Standard Deduction, and Filing Information, for information.

Tax credits. You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the **Personal Allowances Worksheet** below. See Pub. 505 for information on converting your other credits into withholding allowances.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax. If you have pension or annuity

income, see Pub. 505 to find out if you should adjust your withholding on Form W-4 or W-4P.

Two earners or multiple jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others. See Pub. 505 for details.

Nonresident alien. If you are a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

Check your withholding. After your Form W-4 takes effect, use Pub. 505 to see how the amount you are having withheld compares to your projected total tax for 2013. See Pub. 505, especially if your earnings exceed \$130,000 (Single) or \$180,000 (Married).

Future developments. Information about any future developments affecting Form W-4 (such as legislation enacted after we release it) will be posted at www.irs.gov/w4.

Personal Allowances Worksheet (Keep for your records.)

A	Enter "1" for yourself if no one else can claim you as a dependent	A	1
B	Enter "1" if: <ul style="list-style-type: none"> • You are single and have only one job; or • You are married, have only one job, and your spouse does not work; or • Your wages from a second job or your spouse's wages (or the total of both) are \$1,500 or less. 	B	
C	Enter "1" for your spouse. But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.)	C	
D	Enter number of dependents (other than your spouse or yourself) you will claim on your tax return	D	
E	Enter "1" if you will file as head of household on your tax return (see conditions under Head of household above)	E	
F	Enter "1" if you have at least \$1,900 of child or dependent care expenses for which you plan to claim a credit (Note. Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)	F	
G	Child Tax Credit (including additional child tax credit). See Pub. 972, Child Tax Credit, for more information. <ul style="list-style-type: none"> • If your total income will be less than \$65,000 (\$95,000 if married), enter "2" for each eligible child; then less "1" if you have three to six eligible children or less "2" if you have seven or more eligible children. • If your total income will be between \$65,000 and \$84,000 (\$95,000 and \$119,000 if married), enter "1" for each eligible child 	G	
H	Add lines A through G and enter total here. (Note. This may be different from the number of exemptions you claim on your tax return.) ▶	H	

For accuracy, complete all worksheets that apply.

- If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the **Deductions and Adjustments Worksheet** on page 2.
- If you are single and have more than one job or are married and you and your spouse both work and the combined earnings from all jobs exceed \$40,000 (\$10,000 if married), see the **Two-Earners/Multiple Jobs Worksheet** on page 2 to avoid having too little tax withheld.
- If neither of the above situations applies, stop here and enter the number from line H on line 5 of Form W-4 below.

Separate here and give Form W-4 to your employer. Keep the top part for your records.

Form W-4 Department of the Treasury Internal Revenue Service	Employee's Withholding Allowance Certificate	OMB No. 1545-0074 2013
▶ Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.		
1 Your first name and middle initial <i>Geraldine</i>	Last name <i>Benson</i>	2 Your social security number [REDACTED]
Home address (number and street or rural route) <i>2121 OAK PARK AVE</i>		3 <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withheld at higher Single rate. Note. If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.
City or town, state, and ZIP code <i>Berwyn IL 60402</i>		4 If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a replacement card. ▶ <input type="checkbox"/>
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)	5	1
6 Additional amount, if any, you want withheld from each paycheck	6	\$
7 I claim exemption from withholding for 2013, and I certify that I meet both of the following conditions for exemption. <ul style="list-style-type: none"> • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here ▶	7	
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.		
Employee's signature (This form is not valid unless you sign it.) ▶ <i>Geraldine Benson</i>		Date ▶ <i>9-9-2013</i>
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)	9 Office code (optional)	10 Employer identification number (EIN)

Deductions and Adjustments Worksheet

Note. Use this worksheet *only* if you plan to itemize deductions or claim certain credits or adjustments to income.

- 1 Enter an estimate of your 2013 itemized deductions. These include qualifying home mortgage interest, charitable contributions, state and local taxes, medical expenses in excess of 10% (7.5% if either you or your spouse was born before January 2, 1949) of your income, and miscellaneous deductions. For 2013, you may have to reduce your itemized deductions if your income is over \$300,000 and you are married filing jointly or are a qualifying widow(er); \$275,000 if you are head of household; \$250,000 if you are single and not head of household or a qualifying widow(er); or \$150,000 if you are married filing separately. See Pub. 505 for details. 1 \$ _____
- 2 Enter: $\left\{ \begin{array}{l} \$12,200 \text{ if married filing jointly or qualifying widow(er)} \\ \$8,950 \text{ if head of household} \\ \$6,100 \text{ if single or married filing separately} \end{array} \right\}$ 2 \$ _____
- 3 Subtract line 2 from line 1. If zero or less, enter "-0-" 3 \$ _____
- 4 Enter an estimate of your 2013 adjustments to income and any additional standard deduction (see Pub. 505) 4 \$ _____
- 5 Add lines 3 and 4 and enter the total. (Include any amount for credits from the *Converting Credits to Withholding Allowances for 2013 Form W-4* worksheet in Pub. 505.) 5 \$ _____
- 6 Enter an estimate of your 2013 nonwage income (such as dividends or interest) 6 \$ _____
- 7 Subtract line 6 from line 5. If zero or less, enter "-0-" 7 \$ _____
- 8 Divide the amount on line 7 by \$3,900 and enter the result here. Drop any fraction 8 _____
- 9 Enter the number from the *Personal Allowances Worksheet*, line H, page 1 9 _____
- 10 Add lines 8 and 9 and enter the total here. If you plan to use the *Two-Earners/Multiple Jobs Worksheet*, also enter this total on line 1 below. Otherwise, stop here and enter this total on Form W-4, line 5, page 1 10 _____

Two-Earners/Multiple Jobs Worksheet (See *Two earners or multiple jobs* on page 1.)

Note. Use this worksheet *only* if the instructions under line H on page 1 direct you here.

- 1 Enter the number from line H, page 1 (or from line 10 above if you used the *Deductions and Adjustments Worksheet*) 1 _____
- 2 Find the number in Table 1 below that applies to the **LOWEST** paying job and enter it here. However, if you are married filing jointly and wages from the highest paying job are \$65,000 or less, do not enter more than "3" 2 _____
- 3 If line 1 is more than or equal to line 2, subtract line 2 from line 1. Enter the result here (if zero, enter "-0-") and on Form W-4, line 5, page 1. Do not use the rest of this worksheet 3 _____

Note. If line 1 is less than line 2, enter "-0-" on Form W-4, line 5, page 1. Complete lines 4 through 9 below to figure the additional withholding amount necessary to avoid a year-end tax bill.

- 4 Enter the number from line 2 of this worksheet 4 _____
- 5 Enter the number from line 1 of this worksheet 5 _____
- 6 Subtract line 5 from line 4 6 _____
- 7 Find the amount in Table 2 below that applies to the **HIGHEST** paying job and enter it here 7 \$ _____
- 8 Multiply line 7 by line 6 and enter the result here. This is the additional annual withholding needed 8 \$ _____
- 9 Divide line 8 by the number of pay periods remaining in 2013. For example, divide by 25 if you are paid every two weeks and you complete this form on a date in January when there are 25 pay periods remaining in 2013. Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck 9 \$ _____

Table 1

Married Filing Jointly		All Others	
If wages from LOWEST paying job are--	Enter on line 2 above	If wages from LOWEST paying job are--	Enter on line 2 above
\$0 - \$5,000	0	\$0 - \$8,000	0
5,001 - 13,000	1	8,001 - 16,000	1
13,001 - 24,000	2	16,001 - 25,000	2
24,001 - 26,000	3	25,001 - 30,000	3
26,001 - 30,000	4	30,001 - 40,000	4
30,001 - 42,000	5	40,001 - 50,000	5
42,001 - 48,000	6	50,001 - 70,000	6
48,001 - 55,000	7	70,001 - 80,000	7
55,001 - 65,000	8	80,001 - 95,000	8
65,001 - 75,000	9	95,001 - 120,000	9
75,001 - 85,000	10	120,001 and over	10
85,001 - 97,000	11		
97,001 - 110,000	12		
110,001 - 120,000	13		
120,001 - 135,000	14		
135,001 and over	15		

Table 2

Married Filing Jointly		All Others	
If wages from HIGHEST paying job are--	Enter on line 7 above	If wages from HIGHEST paying job are--	Enter on line 7 above
\$0 - \$72,000	\$590	\$0 - \$37,000	\$590
72,001 - 130,000	980	37,001 - 60,000	980
130,001 - 200,000	1,090	60,001 - 175,000	1,090
200,001 - 345,000	1,290	175,001 - 385,000	1,290
345,001 - 385,000	1,370	385,001 and over	1,540
385,001 and over	1,540		

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Internal Revenue Code sections 3402(f)(2) and 6109 and their regulations require you to provide this information; your employer uses it to determine your federal income tax withholding. Failure to provide a properly completed form will result in your being treated as a single person who claims no withholding allowances; providing fraudulent information may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws; and to the Department of Health and Human Services for use in the National Directory of New Hires. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

Check History Report

(Includes Deposit Advices)

PSG - Personnel Staffing Group, LLC

10/29/2015 8:51:49AM

SARAR /Sara Rodriguez Email: srodriguez@mvpstaffing.com

Page 1 of 1

BENSON, GERALDINE
 2121 OAK PARK AVE
 BERWYN IL 60402
 Phone #: 7739821166

Selection Criteria:

Check dates BETWEEN 9/1/2013 AND 10/29/2015

Employee	Adds/Deds	RegHrs	OT Hrs	DT Hrs	Reg Pay	OT Pay	DT Pay	FedWith	StateWith	SocSWith	MedWith
		A/K/U	B/L/V	C/M/W	D/N/X	E/O/Y	F/P/Z	G/Q	H/R	I/S	J/T
BENSON, GERALDINE		5.00	0.00	0.00	41.25	0.00	0.00	0.00	(0.04)	(2.56)	(0.60)
BEN603		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 41.25 Net: 38.05		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck #: 11596515 9/27/2013 P#: 2705905		0.00	0.00	0.00	0.00	0.00	0.00				
BENSON, GERALDINE		14.50	0.00	0.00	119.63	0.00	0.00	(0.52)	(3.96)	(7.41)	(1.73)
BEN603		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 119.63 Net: 106.01		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck #: 11613448 10/4/2013 P#: 2720044		0.00	0.00	0.00	0.00	0.00	0.00				
BENSON, GERALDINE		36.00	0.00	0.00	297.00	0.00	0.00	(19.02)	(12.83)	(18.42)	(4.31)
BEN603		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 297.00 Net: 242.42		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck #: 11614366 10/11/2013 P#: 2731130		0.00	0.00	0.00	0.00	0.00	0.00				
BENSON, GERALDINE		10.00	0.00	0.00	82.50	0.00	0.00	0.00	(2.11)	(5.11)	(1.20)
BEN603		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Gross: 82.50 Net: 74.08		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Ck #: 11627543 10/18/2013 P#: 2740174		0.00	0.00	0.00	0.00	0.00	0.00				
***** Company Totals		65.50	0.00	0.00	540.38	0.00	0.00	(19.54)	(18.94)	(33.50)	(7.84)
		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00				

Total Gross: 540.38 Total Net: 460.56 Total Other Additions and Deductions: 0.00



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Partners

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Organization

Westside Health Authority (WHA) is a 501(c)3 organization serving the Austin neighborhood and the greater Westside of Chicago since 1988. Local residents make up the base of our engaged and committed coalition of stakeholders; they are the authority on the needs of their own community and provide the directives on how the organization can be most impactful. Using public and private resources, WHA provides the services and support needed to help neighbors and families build a better community.

Vision/Mission

WHA envisions a future in which all of Chicago's residents are contributing members of safe and sustainable communities. By tapping into the skills and resources of community members, WHA empowers those who are often perceived as victims. By combining their efforts with support from local institutions and businesses, healthy neighborhoods can emerge, replacing blight and violence with opportunity and growth.

WHA's mission is to use the capacity of local residents to improve the health and well-being of the community. For WHA, *health* is defined broadly to include the social and physical environment which contributes to the mental, physical and spiritual well-being of a person. It also includes relationships with family, friends and neighbors, and the ability to find stable employment.

History



Founded in 1988, the Westside Health Authority began as a coalition of parents, churches, healthcare providers and community-based organizations that worked to successfully prevent the closure of St. Anne's Hospital. Since then, the agency has continued to leverage resources and relationships to promote wellness and development for Chicago's Westside neighborhoods.

During its nearly three decades of operation, the Westside Health Authority has succeeded in being more than a service-provider, but a place that encourages and enables growth, engagement, and positive change. Notable among WHA's success stories are:

- **Every Block A Village:** WHA formed an initiative which works with "citizen leaders" to find solutions to problems identified in the community; organizing local residents to create networks of support on over 100 blocks in Austin.
- **Austin Wellness Center:** Citizen leaders and Austin residents raised the initial funds (\$60,000) necessary to build the 28,000 square foot Austin Wellness Center, which is home to the Austin Cook County Clinic and other health providers. The state-of-the-art facility was completed in 2004 with 80% minority contractors and relied on workers from the local labor

force. The Center was the first new construction in Austin that was not a church or school in forty years, and sparked development and investment in the surrounding areas.

- **Community Re-Entry Services:** In addition to operating one of Chicago's two "one-stop-shops" offering life-building services for ex-offenders returning to their communities, Westside Health Authority developed and facilitates the state-wide Community Support Advisory Council (CSAC). Comprised of clergy, support service providers, community building organizations, and others, CSAC works to establish strategies for working together to reduce recidivism rates.
- **Employment Services:** With more than 1000 client visits monthly, WHA has placed and trained more than 10,000 residents – including youth, veterans, ex-offenders, and homeless individuals – in jobs since 2005.

Our Community

WHA has operated out of the Austin community of Chicago since the organization's founding in 1988. With more than 98,000 people living within 7 square miles, Austin has the largest population and one of the largest land areas of Chicago's 77 officially defined neighborhoods (2010 Census). It is bordered by the suburbs of Cicero to the south and Oak Park to the west. The rest of the community is buffered from other residential neighborhoods by the Eisenhower Expressway toward the northern border and industrial districts to the east.

The community's history is marked by decades of growth followed by decline with the exodus of predominantly white residents in response to persistent infrastructure problems, disinvestment, mortgage redlining, and blockbusting. Since the 1960s, Austin's population and demographics have shifted to a predominantly African American community, with a median household income of \$37,123. The population is getting increasingly younger as well, with one-fifth of Austin residents being between the ages of 6 and 17 years old in 2010.

Demographics:

- Asian – 0.58%
- Black – 85.1%
- Latino – 8.85%
- White – 4.43%
- Other – 1.03%

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Contact Us

Westside Health Authority
 Administrative Office
 5417 West Division Street,
 Chicago, IL 60651
 (773) 378-1878
 Fax (773) 786-2752
 MORE INFORMATION »
 (<http://healthauthority.org/contact-us/>)

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(<http://www.youtube.com/AustinWHA>)

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KOREY
RICHARDSON LLC

November 4, 2015

VIA ELECTRONIC FILING & EMAIL

Catherine Schlabowske
Field Examiner
National Labor Relations Board, Region 13
209 South La Salle St., Suite 900
Chicago, Illinois 60604

**RE: Westside Health Authority v. Personnel Staffing Group, LLC
NLRB Case No. 13-CA-162270**

Dear Ms. Schlabowske:

Please be advised that I represent Personnel Staffing Group, LLC d/b/a Most Valuable Personnel (“PSG” and/or “Respondent”) in this matter. Please direct all correspondence, questionnaires, and information requests to the attention of the undersigned.

The Westside Health Authority (“Complainant” and/or “WHA”) has asserted meritless claims against Respondent. Complainant alleges that Respondent filed a lawsuit against WHA in retaliation for engaging in and/or supported protected concerted activities. WHA further claims that the lawsuit is preempted by the NLRA and violates the NLRA.

Initially, the litigation referenced by Complainant was not filed in retaliation for Complainant having engaged in any protected activities. The lawsuit was filed because WHA, through its agents, sent a correspondence to one of Respondent’s clients deliberately disparaging Respondent and its services, an act which is not protected under the NLRA. Complainant’s Charge is meritless, and Respondent requests that it be dismissed in its entirety.

I. Statement of Facts

Respondent is a temporary labor service agency that provides temporary labor personnel services to third-party clients. On or about March 24, 2015, WHA, through its agents, sent a correspondence to one of Respondent’s clients. (A copy of the March 24, 2015 correspondence is attached hereto as Exhibit A). Within the correspondence, WHA stated that Respondent’s client uses a “segregationist employment model that shuts out African-Americans and targets Mexican immigrant workers through two discriminatory, abusive suburban-based temporary agencies, Flexible Staffing in Melrose Park and MVP in Cicero/Elmwood Park.” (*See Ex. A*). WHA went on to state that Respondent pays “only minimum wage and lock[s] workers into ‘perma-temp’ status rather than benefiting neighborhood residents of all races with decent jobs.” (*Id.*). In total, the correspondence: (a) disparaged Respondent; (b) accused Respondent of being “abusive” and “discriminatory”; (c) claimed that Respondent pays only minimum wage and locks employees into “perma-temp” status, thereby failing to provide employees with “decent”

jobs; and (d) accuses Respondent and its client of engaging in “segregation/discrimination and predatory jobs.” (*Id.*). Respondent denies all of these accusations.

As a result of the defamatory statements contained in WHA’s correspondence to Respondent’s client, on April 16, 2015, Respondent filed a Complaint within the Circuit Court of Cook County, Illinois alleging that Complainant defamed Respondent. That case is currently pending as *Personnel Staffing Group, LLC v. Westside Health Authority*, Case No. 2015 L 003976 (the “State Court Lawsuit”).

II. Complainant Is Not A “Labor Organization” Nor An “Employee” of Respondent Under The NLRA And Does Not Have Standing To Bring The Present Claim

A. Complainant Is Not A Labor Organization And Does Not Have Section 7 Rights

Complainant fails to identify the alleged manner in which Respondent violated any *employees’* rights to self-organize or assist a labor organization, or how Respondent discriminated against any *employees* to encourage or discourage membership in a labor organization. *See* 29 U.S.C. §§ 157, 158(a)(3). It is clear that Complainant is not a labor organization under the NLRA, and accordingly, Respondent cannot have violated the provisions of Sections 8(a)(1) or (3).

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 Act; 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 Act 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.3 354, 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.*

Complainant is not a labor organization “dealing with” employers. Initially, Complainant 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/> (last accessed Nov. 2, 2015), attached hereto as Exhibit B). Complainant 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. Complainant does not “deal with” employers. Nor does Complainant identify itself as “dealing with” employers in its Charge, or even dealing with Respondent specifically – instead, Complainant claims that it merely “supported concerted activity.” (See Charge Against Employer). Furthermore, Complainant is not identified as a “labor organization” by the IRS; instead, it is a charitable organization under Section 501(c)(3).

As Complainant’s organization consists of social advocacy and job-support services, it is not a “labor organization” 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 attempts 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.

Complainant, much like ROCNY in *Restaurant Opportunities Center of New York*, is not a labor organization. Nor is Complainant an employee of Respondent. Accordingly, Complainant’s actions cannot be protected by Section 7 of the NLRA, as Complainant does not fall within the categories of individuals guaranteed Section 7 rights.

As a result, to the extent that Complainant’s claims arise out of Section 8(a)(1) and (3) based on its supposed status as a labor organization (and as therefore having derivative rights under Section 7 of the NLRA), those claims lack merit and must be dismissed.

B. Complainant Is Not An “Employee” Of Respondent And Does Not Have Section 7 Rights

The NLRA provides protections to “employees” as that term is defined in Section 2(3) of the Act. See 29 U.S.C. § 152(3). This includes employees of an employer and even former employees “whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.” *Id.* Additionally, employees who are supervisors are

excluded from this list. *Id.* Section 7 of the NLRA guarantees certain rights to employees, including the right to “engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.” 29 U.S.C. § 157. The Fourth Circuit, in *Halstead Metal Products, a Div. of Halstead Industries, Inc. v. NLRB*, explained:

[A]n employer only violates the Act if the individuals against whom he discriminates are employees for purposes of the Act. In other words, unless the workers who protest are employees, their concerted activity is not protected by the Act. . . . It is undisputed that Hazelwood voluntarily resigned on August 16, 1988, because he was dissatisfied with the proposed work schedule. Because Hazelwood actually resigned, he was not protected by the Act from future discrimination, even if the discrimination arose from participation in concerted activities with employees who were protected by the Act.

940 F.2d 66, 70 (4th Cir. 1991). Indeed, it is clear that former employees lose “their status as NLRA ‘employees’ when they left work for reasons other than a labor dispute or unfair labor practice.” *Merk v. Jewel Companies, Inc.*, 848 F.2d 761, 765 (7th Cir. 1988); *cf. Choc-Ola Bottlers, Inc. v. NLRB*, 478 F.2d 461, 464-65 (7th Cir. 1973) (explaining that an employee who was discharged for cause was not an “employee” under the NLRA). Further, both the NLRB and Seventh Circuit have held that “[e]mployees who quit or abandon their job lose their employee status because they no longer have the requisite expectation of future employment.” *Montgomery Ward & Co., Inc. v. NLRB*, 668 F.2d 291, 299-300 (7th Cir. 1981) (citing *Whiting Corp. v. NLRB*, 200 F.2d 43 (7th Cir. 1952), *John A. Thomas Crane & Trucking Co.*, 224 NLRB 214 (1976), *Roy Lotspeich Publishing Co.*, 204 NLRB 517 (1973) and *Atlantic Coast Fisheries*, 183 NLRB 921 (1970)).

Complainant is not an employee of Respondent. Accordingly, Complainant does not have Section 7 rights, and does not have standing to bring the present claim and its claim should be dismissed in its entirety.

III. Complainant Did Not Engage In Any Protected Concerted Activity

Even if Complainant had Section 7 rights, Complainant did not engage in any protected concerted activities. Section 7 of the NLRA guarantees certain rights to employees, including the right to “engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.” 29 U.S.C. § 157. The correspondence, sent to Respondent’s client on an issue that Complainant *never* raised with Respondent, is not a concerted activity for the purpose of mutual aid or protection. Instead, Complainant’s correspondence had the sole purpose of seeking to damage a business relationship between Respondent and its client, a tortious act which is not governed by the NLRA.

Furthermore, even if Complainant’s correspondence was a concerted activity, there are limits to employees’ rights under Section 7. Under the Supreme Court decision in *NLRB v. Local 1229, IBEW*, 346 U.S. 464 (1953), employees lose the protection of the NLRA where they engage in acts that constitute “flagrant disloyalty and a public disparagement of the Employer’s product

and services.” *Giuffre Medical Center*, Cas No. 4-CA-14069, 1984 WL 47538 (N.L.R.B.G.C. 1984) (quoting *American Arbitration Ass’n*, 233 NLRB 71 (1977)). Where employees – or in this case, a private third party entity – makes statements that disparage an employer’s products and services, the communications are not protected by Section 7. *Id.*

In the present instance, Respondent is a temporary labor service agency that provides temporary labor services to third party clients. Complainant alleged that Respondent does so in a manner that is abusive and is discriminatory. Complainant alleged that Respondent fails to provide its employees – one of the essential elements of Respondent’s services – with decent jobs, and actively abuses and discriminates against those employees. Complainant’s correspondence, intentionally sent to Respondent’s client, was clearly meant to disparage Respondent and to interfere with Respondent’s business relationship. This correspondence had nothing to do with a labor dispute, especially given that Complainant *never* raised these issues to Respondent. Accordingly, it is clear that Complainant’s actions are not protected under Section 7. *Id.* (“Moreover, the relationship between the attacks and the labor dispute was tenuous at best, and since it is obvious from the tone and content of the leaflet that the intention was to harass, ridicule and publicly disparage the Employer, rather than to publicize the labor dispute, the leaflet was considered outside the protection of the Act.”). Complainant’s correspondence is not protected by Section 7 or the NLRA, and as such, Complainant’s claim should be dismissed in its entirety.

IV. The Filing Of Respondent’s Complaint In State Court Is Protected Under The First Amendment And Is Not An Unfair Labor Practice Under Section 8(a)(1) Or (3)

The First Amendment provides for right of access to the Courts to petition the state and federal government for redress of wrongs or grievances. *Bill Johnson’s Restaurant’s Inc. v. NLRB*, 461 U.S. 731, 741 (1983). An employer has every right to seek judicial protection from tortious conduct, even during a labor dispute. *Id.* at 741-42.

Respondent filed its State Court Lawsuit in the Circuit Court of Cook County, Illinois against Complainant and another organization, neither of which are employees of Respondent. None of Respondent’s employees are named in the State Court Lawsuit. Furthermore, Respondent does not seek redress for any actions by Respondent’s employees for engaging in any protected concerted activity. Respondent merely seeks redress for the tortious actions taken by Complainant.

Under *Bill Johnson’s Restaurants*, only baseless litigation with the intent of “retaliating against an employee for the exercise of rights protected by § 7 of the NLRA” is an enjoined unfair labor practice. 461 U.S. at 744. Both retaliatory intent and a lack of reasonable basis for the litigation are essential prerequisites for a claim that an employer engaged in an unfair labor practice in the filing of litigation against an employee or labor organization. *Id.* at 748-49. Furthermore, the NLRB may not enjoin reasonably based state court lawsuits due to First Amendment concerns. *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 530 (2002). However, it is not the province of the NLRB to make factual determinations in deciding whether a claim filed in state court has a reasonable basis. *Bill Johnson’s Restaurants*, 461 U.S. at 748. Respondent

has a reasonable basis for the filing of its State Court Lawsuit against Respondent. *See BE & K Const. Co.*, 536 U.S. at 530. Complainant has clearly defamed Respondent, as clearly alleged in the State Court Lawsuit, and Respondent is genuinely seeking redress from the harms inflicted by Complainant through the publication of its defamatory correspondent to one of Respondent's clients.

Furthermore, under established Supreme Court precedent, even if Complainant was a labor organization, Respondent has the right to seek redress from wrongs as a result of Complainant's defamation. Complainant has established and put forth no evidence that Respondent's State Court Lawsuit is meritless or filed for a retaliatory motive. Accordingly, Respondent's State Court Lawsuit is not an unfair labor practice under Section 8(a)(1) or (3) of the NLRA and *Bill Johnson's Restaurants*.

V. Respondent's State Court Lawsuit Is Not Preempted By The NLRA

Respondent's State Court Lawsuit is clearly not preempted by the NLRA. The Supreme Court, in *San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon*, found that litigation is not preempted where the "regulated conduct touche[s] interests so deeply rooted in local feeling and responsibility," because the Supreme Court could not infer that Congress deprived the States of their jurisdiction to act. 359 U.S. 236, 244 (1959). Following *Garmon*, the Supreme Court decided *Linn v. United Plant Guard Workers of America, Local 114*, in ruling that a defamation suit in a labor dispute was not preempted by the NLRA. 383 U.S. 53 (1966). In the context of a labor dispute, the Supreme Court recognized that "although the Board tolerates intemperate, abusive and inaccurate statements made by the union, . . . [the NLRA does not give] either party license to injure the other intentionally by circulating defamatory or insulting material known to be false." *Id.* at 61. Further, the Supreme Court explained that the injury a defamatory statement might cause has no relevance to the NLRB's function, and that the NLRB cannot remedy defamation. *Id.* at 63-64. In addition, the Supreme Court recognized that "state remedies have been designed to compensate the victim and enable him to vindicate his reputation." *Id.* For that reason, the Supreme Court found that defamation cases, even in the context of a labor dispute, can fall within the *Garmon* exception to the preemption doctrine.

Once again, Respondent's State Court Lawsuit does not fall within the confines of the NLRA – it is not a case involving a labor dispute, it is not a case involving the employer-employee relationship, and it is not a case involving employees working together for mutual aid or protection. Respondent's State Court Lawsuit involves Respondent, a temporary labor service agency, and two third party independent organizations who intentionally published defamatory remarks about Respondent to one of Respondent's clients. Complainant's wrongful actions are not protected by the NLRA and do not implicate the NLRA in any manner. Therefore, Respondent's State Court Lawsuit is not preempted by the NLRA.

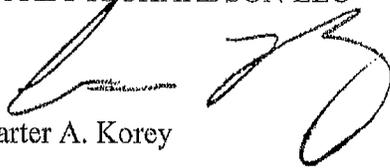
Furthermore, even if Complainant made its statements in the context of a labor dispute, Complainant made its statements with malice and/or reckless indifference to Respondent's rights and reputation. Complainant alleges that Respondent uses a segregationist employment model, is abusive, and is discriminatory. Respondent vehemently denies these unfounded statements.

Furthermore, there has never been a determination by any court or agency that Respondent abuses and/or discriminates against its employees, and Complainant's statements to the contrary, that Respondent abuses and discriminates against its employees, is entirely unfounded and defamatory. Yet Complainant made those exact allegations, to Respondent's client, without investigation and without any consideration for Respondent's rights. Complainant does not provide "proof" of its allegations in its correspondence. Instead, Complainant sent an inflammatory and defamatory correspondence to one of Respondent's clients in an effort to damage Respondent's relationship with its client. Complainant did so, and discovery will prove, with the intent to harm Respondent's business and reputation with its client, and without regard to the falsity of its statements. As a result, even in the context of a labor dispute (which Respondent contests), Respondent's State Court Lawsuit is not preempted.

For all of the foregoing reasons, Respondent respectfully requests that Complainant's Charge be dismissed in its entirety.

Very truly yours,

KOREY RICHARDSON LLC


Carter A. Korey

cc: Personnel Staffing Group, LLC

Richard J. Goldman, President
Mercury Plastics
4535 W. Fullerton Ave.
Chicago, IL 60639

March 24, 2015

Dear Mr. Goldman,

We hope this letter finds you well and that it begins a new, mutually beneficial relationship with our community. Right now we believe that relationship is out of balance. Mercury Plastics supplies products for many display campaigns at stores where we shop. Yet although these displays market to us as customers, Mercury uses a segregationist employment model that shuts out African-Americans and targets Mexican immigrant workers through two discriminatory, abusive suburban-based temporary agencies, Flexible Staffing in Melrose Park and MVP in Cicero/Elmwood Park.

On top of this, Mercury has received indirect and direct TIF support, including a Small Business Improvement Fund (SBIF) grant from the City. In effect, westsiders are seeing some of our taxes diverted to help fund discrimination against African-Americans! It also means money flowing to suburban agencies who pay only minimum wage and lock workers into 'perma-temp' status rather than benefiting neighborhood residents of all races with decent jobs.

Of course, these issues of segregation/discrimination and predatory jobs are not unique to Mercury, but pervasive throughout westside TIF districts—a situation that we are protesting today.

Like everybody, westsiders need food, housing, and the chance to contribute to our communities. To meet these needs, we ask that our rights to equal access to work, living wages, and fair treatment on the job be respected. We feel frustrated when we are denied these.

We would like to meet to talk about what's happening and request some changes. Because these issues are widespread, we believe your direct involvement as top leader is key.

We appreciate your time to help resolve these issues. Please call Mr. Charles Perry of Westside Health Authority at (773) 813-3025 to arrange a meeting.

Sincerely,

Members and Allies of the Westside Health Authority and the South Austin Coalition.

Charles Perry
~~Bob Vondrasek~~

Chris White
Sal Armstrong

Rob May

Eric Redmond

Bob Vondrasek

Julie Kase

Julia Trauma

Geraldine Benson

William Edwards

Christopher Stewart

Boyer Davis

EXHIBIT A



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Organization

Westside Health Authority (WHA) is a 501(c)3 organization serving the Austin neighborhood and the greater Westside of Chicago since 1988. Local residents make up the base of our engaged and committed coalition of stakeholders; they are the authority on the needs of their own community and provide the directives on how the organization can be most impactful. Using public and private resources, WHA provides the services and support needed to help neighbors and families build a better community.

Vision/Mission

WHA envisions a future in which all of Chicago's residents are contributing members of safe and sustainable communities. By tapping into the skills and resources of community members, WHA empowers those who are often perceived as victims. By combining their efforts with support from local institutions and businesses, healthy neighborhoods can emerge, replacing blight and violence with opportunity and growth.

WHA's mission is to use the capacity of local residents to improve the health and well-being of the community. For WHA, *health* is defined broadly to include the social and physical environment which contributes to the mental, physical and spiritual well-being of a person. It also includes relationships with family, friends and neighbors, and the ability to find stable employment.

History



Founded in 1988, the Westside Health Authority began as a coalition of parents, churches, healthcare providers and community-based organizations that worked to successfully prevent the closure of St. Anne's Hospital. Since then, the agency has continued to leverage resources and relationships to promote wellness and development for Chicago's Westside neighborhoods.

During its nearly three decades of operation, the Westside Health Authority has succeeded in being more than a service-provider, but a place that encourages and enables growth, engagement, and positive change. Notable among WHA's success stories are:

- **Every Block A Village:** WHA formed an initiative which works with "citizen leaders" to find solutions to problems identified in the community; organizing local residents to create networks of support on over 100 blocks in Austin.
- **Austin Wellness Center:** Citizen leaders and Austin residents raised the initial funds (\$60,000) necessary to build the 28,000 square foot Austin Wellness Center, which is home to the Austin Cook County Clinic and other health providers. The state-of-the-art facility was completed in 2004 with 80% minority contractors and relied on workers from the local labor

force. The Center was the first new construction in Austin that was not a church or school in forty years, and sparked development and investment in the surrounding areas.

- **Community Re-Entry Services:** In addition to operating one of Chicago's two "one-stop-shops" offering life-building services for ex-offenders returning to their communities, Westside Health Authority developed and facilitates the state-wide Community Support Advisory Council (CSAC). Comprised of clergy, support service providers, community building organizations, and others, CSAC works to establish strategies for working together to reduce recidivism rates.
- **Employment Services:** With more than 1000 client visits monthly, WHA has placed and trained more than 10,000 residents - including youth, veterans, ex-offenders, and homeless individuals - in jobs since 2005.

Our Community

WHA has operated out of the Austin community of Chicago since the organization's founding in 1988. With more than 98,000 people living within 7 square miles, Austin has the largest population and one of the largest land areas of Chicago's 77 officially defined neighborhoods (2010 Census). It is bordered by the suburbs of Cicero to the south and Oak Park to the west. The rest of the community is buffered from other residential neighborhoods by the Eisenhower Expressway toward the northern border and industrial districts to the east.

The community's history is marked by decades of growth followed by decline with the exodus of predominantly white residents in response to persistent infrastructure problems, disinvestment, mortgage redlining, and blockbusting. Since the 1960s, Austin's population and demographics have shifted to a predominantly African American community, with a median household income of \$37,123. The population is getting increasingly younger as well, with one-fifth of Austin residents being between the ages of 6 and 17 years old in 2010.

Demographics:

- Asian - 0.58%
- Black - 85.1%
- Latino - 8.85%
- White - 4.43%
- Other - 1.03%

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 Initiatives (<http://healthauthority.org/initiatives/>)
 Community (<http://healthauthority.org/community-2/>)

Contact Us

Westside Health Authority
 Administrative Office
 5417 West Division Street,
 Chicago, IL 60651
 (773) 378-1878
 Fax (773) 786-2752
 MORE INFORMATION » (<http://healthauthority.org/contact-us/>)

Mailing List

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(<http://www.linkedin.com/pub/westside-health-authority/36/40b/745>)



(<http://www.youtube.com/AustinWHA>)

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EXHIBIT 6

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

PERSONNEL STAFFING GROUP, LLC,)
 a Florida limited liability company d/b/a,)
 MOST VALUABLE PERSONNEL,)
)
 Plaintiff,)
)
 v.)
)
 WESTSIDE HEALTH AUTHORITY, an)
 Illinois not-for-profit corporation, and)
 SOUTH AUSTIN COALITION COMMUNITY)
 COUNCIL, an Illinois not-for-profit)
 Corporation,)
)
 Defendants.)

Case No.

2015L003974
 CALENDAR/ROOM 2
 TIME 00:00
 Libel/Defamation
 APR 15 PM 3:20
 CLERK OF COURT
 LAW DIVISION

COMPLAINT AT LAW

NOW COMES Plaintiff, PERSONNEL STAFFING GROUP, LLC d/b/a MOST VALUABLE PERSONNEL (“Plaintiff” and/or “MVP”), by and through its attorneys, KOREY RICHARDSON LLC, and for its Complaint at Law against Defendants, WESTSIDE HEALTH AUTHORITY and SOUTH AUSTIN COALITION COMMUNITY COUNCIL (collectively, “Defendants”), states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff MVP is a Florida limited liability company with its principal place of business in the Village of Northbrook, County of Cook, and State of Illinois.
2. Defendant Westside Health Authority is a not-for-profit corporation with its principal place of business in the City of Chicago, County of Cook, and State of Illinois.
3. Defendant South Austin Coalition Community Council, Inc. is a not-for-profit corporation with its principal place of business in the City of Chicago, County of Cook, and State of Illinois.

4. Venue is proper in the Circuit Court of Cook County, Illinois, as the events giving rise to the causes of action asserted herein primarily occurred within Cook County, Illinois.

STATEMENT OF FACTS

5. MVP is a temporary labor service agency that provides personnel services to third party client companies.

6. MVP provides employment opportunities for thousands of workers throughout the Chicagoland area, and places employees on job assignments with numerous Chicago-area companies. MVP hires employees for placement on both a temporary and temporary-to-permanent basis, and attempts to find permanent jobs for Chicago-area residents with established and well-regarded companies.

7. One such company to which MVP provides temporary labor services is Mercury Plastics, Inc. ("Mercury Plastics").

8. On or about March 24, 2015, individuals acting on behalf of Westside Health Authority ("WHA") and the South Austin Coalition Community Council ("SACCC") sent a correspondence to Mercury Plastics that contained disparaging and defamatory remarks regarding MVP. Said correspondence, in pertinent part, reads: "Mercury uses a segregationist employment model that shuts out African Americans and targets Mexican immigrant workers through *two discriminatory, abusive suburban-based temporary agencies, Flexible Staffing in Melrose Park and MVP in Cicero/Elmwood Park.*" (A true and correct copy of the correspondence dated March 24, 2015, is attached hereto and incorporated herein as Exhibit "A" (emphasis added)).

9. Defendants have disparaged and defamed MVP's business to third parties in an attempt to discredit MVP within its industry, to discourage clients to work with MVP, and to

actively destroy MVP's business relationships with its clients. Defendants' statements indicate that MVP engages in illegal conduct and lacks integrity as a business and these statements greatly harm MVP's business. Further, Defendants' statements impugn MVP's reputation within the community where it operates and provides services.

COUNT I
Defamation

10. Plaintiff re-incorporates and re-alleges the allegations of Paragraphs 1 through 9 as if fully set forth herein.

11. Defendants' statements to third parties are words that impute that MVP is unable to perform its duties and that they lack integrity in performing those duties, words that impute the commission of an illegal offense and words that prejudice MVP in their business.

12. The above-referenced statements were and are false.

13. Defendants' publishing of said statements constitutes defamation *per se*, as the statements impugn MVP's business practices and integrity, accuse MVP of engaging in illegal activities, and generally harm and prejudice MVP's reputation and goodwill within the community regarding MVP's business operations.

14. Defendants' statements further prejudice MVP's ability to work in the labor services industry, as Defendants have disparaged MVP as a company to a current MVP client, Mercury Plastics. MVP's industry is highly competitive, with multiple temporary labor businesses competing for clients. Defendants' statements to a current MVP client discourage business with MVP and disparage MVP to this client.

15. Upon information and belief, Defendants have defamed MVP to other third-party client companies of MVP and to other members of the Chicago community.

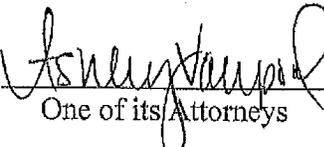
16. Defendants' statements have damaged MVP's reputation in the industry and the community wherein it provides services.

17. Defendants have made those statements with deliberate malice or with reckless indifference to MVP's rights and reputation.

WHEREFORE, Plaintiff, PERSONNEL STAFFING GROUP, LLC d/b/a MOST VALUABLE PERSONNEL, respectfully requests that this Honorable Court: (a) enter judgment in favor of Plaintiff and against Defendants, (b) award Plaintiff its actual and compensatory damages in an amount to be determined at trial not less than \$50,000.00; (c) award Plaintiff punitive damages; and (d) award Plaintiff such further relief as this Court deems equitable and just.

Respectfully submitted,

PERSONNEL STAFFING GROUP, LLC d/b/a
MOST VALUABLE PERSONNEL

By: 
One of its Attorneys

Carter A. Korey
Elliot Richardson
KOREY RICHARDSON LLC
Attorneys for Plaintiffs
20 S. Clark St., Suite 500
Chicago, Illinois 60603
P: (312) 372.7075
Attorney No. 57414

Richard J. Goldman, President
Mercury Plastics
4535 W. Fullerton Ave.
Chicago, IL 60639

March 24, 2015

Dear Mr. Goldman,

We hope this letter finds you well and that it begins a new, mutually beneficial relationship with our community. Right now we believe that relationship is out of balance. Mercury Plastics supplies products for many display campaigns at stores where we shop. Yet although these displays market to us as customers, Mercury uses a segregationist employment model that shuts out African-Americans and targets Mexican immigrant workers through two discriminatory, abusive suburban-based temporary agencies, Flexible Staffing in Melrose Park and MVP in Cicero/Elmwood Park.

On top of this, Mercury has received indirect and direct TIF support, including a Small Business Improvement Fund (SBIF) grant from the City. In effect, westsiders are seeing some of our taxes diverted to help fund discrimination against African-Americans! It also means money flowing to suburban agencies who pay only minimum wage and lock workers into 'perma-temp' status rather than benefiting neighborhood residents of all races with decent jobs.

Of course, these issues of segregation/discrimination and predatory jobs are not unique to Mercury, but pervasive throughout westside TIF districts—a situation that we are protesting today.

Like everybody, westsiders need food, housing, and the chance to contribute to our communities. To meet these needs, we ask that our rights to equal access to work, living wages, and fair treatment on the job be respected. We feel frustrated when we are denied these.

We would like to meet to talk about what's happening and request some changes. Because these issues are widespread, we believe your direct involvement as top leader is key.

We appreciate your time to help resolve these issues. Please call Mr. Charles Perry of Westside Health Authority at (773) 813-3025 to arrange a meeting.

Sincerely,

Members and Allies of the Westside Health Authority and the South Austin Coalition.

Charles Perry
~~DeSilva~~

Chris White
Sel. Armstrong

Rob Mc

Ella Redmond

Beverly Benson

Bob Vondrasek

Melvin E. Green

Julie Kose

Christopher Stewart

Julia Truena

George Davis

EXHIBIT A

EXHIBIT 7

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case
13-CA-162270

Date Filed
10/16/2015

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Personnel Staffing Group ("MVP")		b. Tel. No. 312-372-7075
d. Address (Street, city, state, and ZIP code) 666 Dundee Rd., Ste 201, Northbrook, IL 60062-2742		c. Cell No.
e. Employer Representative Carter A. Korey Korey Richardson LLC 20 S. Clark St., Ste. 500 Chicago, IL 60603		f. Fax No.
i. Type of Establishment (factory, mine, wholesaler, etc.) Temporary Staffing Agency		g. e-Mail
j. Identify principal product or service Labor		h. Number of workers employed >500

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

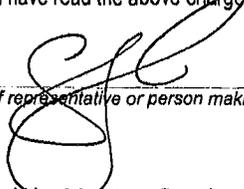
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
On April 16, 2015, the Employer filed a lawsuit against the Charging Party, Westside Health Authority (WHA) for engaging in and supporting protected concerted activity. WHA engaged in and/or supported protected concerted activities and is impacted by the retaliation.

The April 6, 2015 lawsuit is preempted by federal law and violates the Act because it tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights and/or was filed to restrain Section 7 rights.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
Westside Health Authority

4a. Address (Street and number, city, state, and ZIP code) Despres, Schwartz & Geoghegan, Ltd. 77 W. Washington Street, Suite 711 Chicago, Illinois 60602		4b. Tel. No. 312-372-2511
		4c. Cell No.
		4d. Fax No. 312-372-7391
		4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. 312-372-2511
By  Sean Morales-Doyle, attorney (signature of representative or person making charge) (Print/type name and title or office, if any)		Office, if any, Cell No.
77 W. Washington St. Ste 711, Chicago, IL 60602		Fax No. 312-372-7391
10/16/2015 (date)		e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 13-CA-162002	Date Filed 10/15/15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

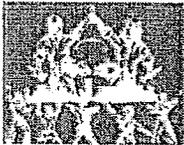
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Most Valuable Personnel, Inc.	b. Tel. No. 847-622-5044
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 666 Dundee Road, Suite 201 Northbrook, IL 60062	e. Employer Representative
	g. e-Mail
	h. Number of workers employed 1000+
i. Type of Establishment (factory, mine, wholesaler, etc.) Temporary Agency	j. Identify principal product or service Temporary Labor
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) <u>Section 7</u> of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)	
<p>On or about March 24, 2015, I, signed a letter (attached) to Mercury Plastics of Chicago complaining of discrimination by their contracted temporary agency, MVP. That same day I also gave testimony at a press conference which was reported in the media.</p> <p>On or about April 16, MVP retaliated by filing a lawsuit (attached) against Westside Health Authority (WHA) citing the letter, alleging business losses at Mercury Plastics on account of it, and demanding \$50,000 in damages from WHA and South Austin Council. The two groups co-created the Campaign Against Segregation of Employees (CASE), of which I am a publicly active member, along with being a member of WHA. I allege that MVP retaliated against me for for engaging in concerted activity by suing WHA, a labor supporter.</p> <p>In July 2013, I had also given testimony on discrimination by MVP at a public forum which State Rep. La Shawn Ford hosted. A top MVP executive, Darren _____?, also participated in that forum and heard my testimony.</p>	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Geraldine Benson	
4a. Address (Street and number, city, state, and ZIP code) 716 S. Kostner, Chicago, IL 60624	4b. Tel. No.
	4c. Cell No. 773-982-1166
	4d. Fax No.
	4e. e-Mail geraldinebenson97@gmail.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>Geraldine Benson</u> (signature of representative or person making charge)	<u>Geraldine Benson</u> (Print/type name and title or office, if any)
	Tel. No.
	Office, if any, Cell No.
	Fax No.
	e-Mail
Address <u>716 S. Kostner Chq, IL 60624</u> <u>10/6/15</u> (date)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

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EXHIBIT 8



Chicago Workers' Collaborative

Uniting low-wage and temporary workers to bring down barriers for full employment and equality

[Home](#) [Campaigns](#) [Contact](#) [About Us](#)

[Home](#)

Navigation

[Path to Citizenship should not be tied to any other issue](#)

▶ [Bill Moyers & Company Investigator Highlights Bringing Down Barriers](#)

[Change 4 Good celebrates its first official trainee to receive his barber license!](#)

▶ [Comité de Mujeres](#)

[CWC Helps Bring National Media Coverage to Temp Staffing Abuses](#)

[CWC Members And Supporters Deliver Message Loud And Clear To Temp Staffing Agencies: No More Abuse! We Want Respect, And A Voice At Work!](#)

[Forever Temp? Once a bastion of good jobs, manufacturing has gone gaga for temps.](#)

[State Representative La Shawn K. Ford commits to toughen temp agency regulations stop discrimination](#)

[The New Temp Economy](#)



About Us

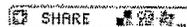
Submitted on Tue, 10/22/2013 - 21:02

Chicago Workers' Collaborative is an Illinois non-profit organization founded in 2000 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. CWC has assisted thousands of economically disadvantaged immigrants, day laborers and others employed in the contingent underground workforce to move into the mainstream. We educate about workplace rights, provide critical services to our members, and mobilize to gain full access to employment for all workers, especially immigrants and African Americans. The CWC presently is working on the following initiatives:

- Collaborating with the Illinois Department of Labor and the Illinois Attorney General's office to improve enforcement of state labor laws. Developing the leadership of temp workers and providing them with critical assistance through our four Service Centers located in Chicago, Waukegan, Rolling Meadows and Aurora.
- Educating temp workers about their employment-related rights.
- Working with law enforcement authorities in arresting the perpetrators and helping the victims of human trafficking.
- Bringing together African-American and Latino workers to end the criminalization of our people, including Comprehensive Immigration Reform, so we may all work and participate in our community as equals.

Not only does CWC have a long history of assisting temporary workers, but we have also incubated many other organizing efforts on behalf of low-income workers. In 2007, members of the Workers Collaborative joined together to form Workers United for Eco Maintenance, a cooperative working to protect the environment and promote fair-wage jobs. After several years of incubation/support Eco Maintenance became an independent business in June 2010. In 2008, the CWC helped to build the leadership of Chicago Street Vendors Association in the struggle to stop repressive police action and convince the City to adopt an Ordinance that would enable them to obtain a license to legally prepare and sell food on the street. In 2009, we assisted in the formation of Chicago Community and Worker Rights (CCWR) which focuses much of its organizing work on the struggle of the street vendors.

More recently, as part of our initiative to reach out to African Americans, we are the fiscal sponsor of the Change 4 Good Project which trains ex-offenders in the barbering profession.



Our Partners

[National Staffing Workers Alliance](#)
[Warehouse Workers for Justice](#)
[Centro de Trabajadores Unidos](#)
[Latino Union of Chicago](#)

Our Campaigns

[Campaigns](#)
[Justice at Staffing Network](#)
[The Temp Industry](#)

Chicago Workers' Collaborative
5014 S. Ashland
Chicago, IL 60609
www.chicagoworkerscollaborative.org
postmaster@chicagoworkerscollaborative.org
Toll Free: 1-877-77-LUCHA
Toll Free: 1-877-775-8242
Chicago, Waukegan and Rolling Meadows, IL

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EXHIBIT 9



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(<http://healthauthority.org/>)

Community (<http://healthauthority.org/community-2/>)

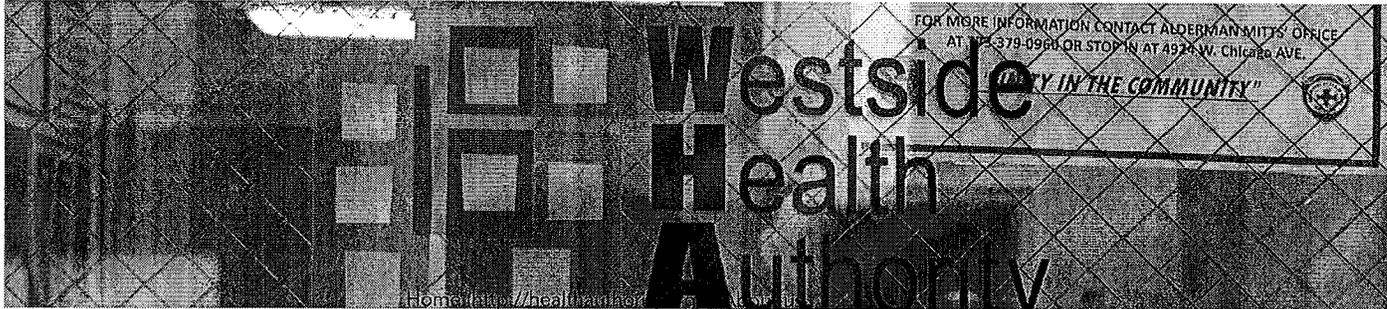
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Every Block A Village

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Executive Staff

(<http://healthauthority.org/about-wha/executive-staff/>)

Annual Report

(<http://healthauthority.org/about-wha/annual-report/>)

Current Opportunities

(<http://healthauthority.org/about-wha/working-with-wha/>)

Partners

(<http://healthauthority.org/about-wha/partners/>)

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