

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

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

and Case 13-CA-149591

CHICAGO WORKERS' COLLABORATIVE,

and Case 13-CA-149592

JOSE SOLORZANO, an Individual,

and Case 13-CA-149593

ISAURA MARTINEZ, an Individual,

and Case 13-CA-149594

MARCELLA GALLEGOS, an Individual

and Case 13-CA-149596

DORA IARA, an Individual,

and Case 13-CA-155513

ROSA CEJA, an Individual

and Case 13-CA-162002

GERALDINE BENSON, an Individual,

and Case 13-CA-162270

WESTSIDE HEALTH AUTHORITY

**RESPONDENTS' REPLY TO GENERAL COUNSEL'S OPPOSITION TO
RESPONDENTS' MOTION FOR SUMMARY JUDGMENT**

NOW COME Respondents PERSONNEL STAFFING GROUP, LLC d/b/a MOST
VALUABLE PERSONNEL ("MVP") and MVP WORKFORCE, LLC ("Workforce," and

collectively with MVP, “Respondents”), and respectfully request that the Board grant Respondents’ Motion for Summary Judgment. In support of this motion, Respondents state as follows:

INTRODUCTION

No genuine issue of material fact exists in this case, as the CWC-Related Charges are barred by the statute of limitations, and the CWC-Related Charges and WHA-Related Charges arise out of lawsuits filed against two third-party organizations that are not entitled to protection under the NLRA. More specifically, since the claims in Case Nos. 13-CA-149591, 13-CA-149592, 13-CA-149593, 13-CA-149594, and 13-CA-149596 were never served on MVP or Workforce during the six-month statutory period, these claims are clearly barred by the statute of limitations set out in Section 10(b) of the NLRA. Additionally, the CWC-Related Charges and WHA-Related Charges concern claims for defamation filed against two private, third-party organizations, which are not afforded protections under the NLRA. Therefore, summary judgment must be entered in Respondents’ favor.

ARGUMENT

There are two issues raised by the General Counsel’s Opposition to Respondent’s Motion for Summary Judgment (“GC Opposition”). Specifically, the General Counsel argues that: (1) the CWC-Related Charges are timely filed within the 10(b) statutory period because the Regional Director served those Charges within the six month period; and (2) CWC and WHA are protected by the NLRA. These arguments are without merit, as Respondents have unequivocally demonstrated that there is no genuine issue of material fact in this case. First, the CWC-Related Charges were not served upon Respondents within the six month period delineated in Section 10(b) of the NLRA and thus those Charges are barred. Next, CWC and WHA are not afforded protections

under the NLRA as they are private, third-party organizations and expanding any reading of the NLRA to protect the acts carried out by CWC and WHA, and their respective agents, would completely destroy years of common law. For these reasons, the General Counsel's arguments are unpersuasive, as Respondents have demonstrated that there are no genuine issues of material fact, and thus the Board should grant Respondents' Motion for Summary Judgment.

I. THE CWC-RELATED CHARGES WERE NOT SERVED AND WERE NOT FILED WITHIN THE 10(b) STATUTORY PERIOD AND THUS THEIR CLAIMS ARE BARRED

Pursuant to 29 C.F.R. § 102.14(a), it is the obligation of the charging party to serve the charge upon the charged party. More specifically, "the charging party shall be responsible for the timely and proper service of a copy [of the charge] upon the person against whom such charge is made." Service can be effectuated "personally, or by registered mail, certified mail, regular mail, or private delivery service." *Id.* In contrast, the "Regional Director will, *as a matter of courtesy*, cause a copy of such charge to be served by regular mail on the person against whom the charge is made." 29 C.F.R. § 102.14(b) (emphasis added).

Initially, the CWC-Related Charges are barred because they were not served on Respondents by the Charging Parties or the Regional Director within the six month statutory period delineated in Section 10(b) of the NLRA. *See* 29 U.S.C. § 160(b). As noted by the General Counsel, the Charges were sent on April 7, 2015, undeniably more than six months after the complained of acts for the Solorzano Charge and Gallegos Charge which occurred on September 24, 2014, and the CWC Charge, Iara Charge, and Martinez Charge which occurred on October 6, 2014. (Opp'n at 3). Even if Solorzano and Gallegos were not "aware" of any alleged violations until the filing of the lawsuit on October 6, 2014, which Respondents dispute, these individuals had an obligation to file their Charges upon the discovery of the violation. *See* 29 U.S.C. § 160(b).

Thus, even under this argument, the claims would still be barred. Moreover, this argument completely misstates the allegations in the Complaint as it is alleged that Solorzano and Gallegos attended a job fair at Respondents' facility and were not hired on that date in retaliation for engaging in purportedly protected activity—the allegations which serve the basis of these individuals' Charges. (Compl. at Count IX(a)-(b)). There is no material dispute on this fact that Solorzano and Gallegos' complaints stem from the alleged acts on September 24, 2014. Therefore, since Respondents were not served with the Charges by either the Charging Parties or the Regional Director within the six month statutory period, these claims are clearly barred by the NLRA Section 10(b).¹ See *Kelley v. NLRB*, 79 F.3d 1238, 1247 (1st Cir. 1996).

As an additional point, the General Counsel makes a specific argument and reference to Solorzano and Gallegos, and then concludes that this argument applies to all of the individual parties. (Opp'n at 4-5). Specifically, the General Counsel argues that Solorzano and Gallegos "could not have known of Respondents' refusal to hire them until, at the earliest, the date they were aware of the lawsuit Respondents filed on October 6, 2014." (Opp'n at 4-5). However, this is completely false as the lawsuit was never filed against Solorzano, Gallegos, or the other individual Charging Parties Martinez and Iara. Given the fact that Solorzano and Gallegos apparently applied for work at a job fair for a temporary labor service agency (MVP), they would have known that they were not asked to go to work: (a) either immediately (while on the premises), or (b) not called after the job fair. Accordingly, the only potential basis for the Solorzano and Gallegos complaints would stem from the purported failure to hire on September 24, 2014. Therefore, since the Charges were not served upon Respondents until April 7, 2015, these claims are barred by the 10(b) statutory period.

¹ To the extent that the General Counsel argues that the WHA and WHA-Related Charges were timely filed and/or served, Respondents state that this argument was not presented in their Motion for Summary Judgment.

Additionally, to the extent the General Counsel claims that the statute of limitations period was extended based on the maintenance of the state court lawsuit, the argument lacks merit. A cause of action arises when the plaintiff (or in this case) “knows or reasonably should know, of the acts constituting the [tortfeasor’s] alleged wrongdoing.” *Arriaga v. International Ladies’ Garment Worker’s Union-Puerto Rico Council (Local 600-601)*, 656 F. Supp. 309, 311 (D.P.R. 1987). The CWC was provided notice of the state court lawsuit on the day it was filed. If the CWC, the individual Charging Parties, and the General Counsel claims that the filing of a portion of the lawsuit was retaliatory, which Respondents contest, then they knew of the alleged wrongdoing on October 6, 2014, and their statute of limitations period began to run at that time. Accordingly, the Charging Parties were required to file their Charges, and provide Respondents with notice of the Charges, within the six month period of Section 10(b). That did not occur, and accordingly, the CWC-Related Charges are barred by the Section 10(b) limitations period.

For all of these reasons, there is no genuine issue of material fact that the Charging Parties and the Regional Director did not serve the CWC-Related Charges on Respondents within the six month statutory limitation set forth in Section 10(b) of the NLRA. Thus, since the General Counsel has not met its burden in showing that there is any issue of material fact on this point, Respondents’ Motion for Summary Judgment must be granted.

II. THERE IS NO DISPUTE THAT CWC AND WHA ARE NOT PROTECTED BY THE NLRA

There is no genuine issue of material fact that CWC and WHA are not protected by the National Labor Relations Act, as they are private, third-party organizations. The arguments presented by the General Counsel in the GC Opposition put unfounded limits on employers’ rights. If taken to their conclusions, the General Counsel’s arguments effectively abolish an employer’s ability to file a common law defamation claim against *any* entity or individual. The General

Counsel argues that the lawsuits filed by Respondents are in violation of the NLRA because these suits “restrained and coerced the Section 7 rights of the employees who are members of [CWC and WHA].” (Opp’n at 5). The General Counsel purports to present this argument even though the employees whose rights have been “restrained and coerced” are not, and have never been, employees of Respondents, and despite the fact that these individuals were not named or otherwise referenced in any lawsuits. The General Counsel further urges this Board to find that CWC and WHA are afforded the NLRA protections because to do otherwise would allow “Respondents’ lawsuits [] to interfere with the Section 7 rights of individual workers, like the Charging Parties, who have chosen to exercise their rights through and in conjunction with the CWC and WHA.” Effectively, the General Counsel is asking this Board to recognize that any individual who makes any statement concerning any other person’s employment is protected under the NLRA, even if those statements are false, defamatory, and malicious. And even if those statements are made by private, third-party organizations who do not represent employees and are not considered (by themselves or others) to be labor organizations. This is completely beyond the scope of any reasonable reading of the NLRA, including how and when Congress intended these protections to be afforded. It would effectively protect any person or entity who makes any statement concerning employment. This is beyond the realm of even the most expansive reading of the NLRA and this argument must be rejected.

In support of the above argument, the General Counsel cites to *Diamond Walnut Growers*, 312 NLRB 61, 69 (1993). However, the instant matter is factually distinct from *Diamond Walnut*, as in that case the employer filed a lawsuit against *the union*, a protected labor organization; here, Respondents filed suit against two private, third-party organizations which are not comprised of individuals who have any employment relationship with Respondents nor are these private

organizations acting on behalf of employees. This is factually distinct from a situation in which an employer sues a union—an organization that is specifically comprised of individual employees and whose purpose is to represent the interests of those employees. Furthermore, in *Diamond Walnut*, the Board’s holding was specifically limited to a union context. *Id.* at 69. (“It is sufficient to sue a union only.”). There was absolutely no statement or reference that private, third-party organizations are afforded the same, or even similar, protections under the NLRA as those provided to unions. The General Counsel’s expansive reading of this case, as well as *J.A. Croson Co.*, 359 NLRB No. 2 (2012), is troubling and purports to unsettle common law.² Unions are formed to protect and represent employees. CWC and WHA are not unions and do not purport to represent employees or their interests. Rather, CWC and WHA are third party organizations filled with non-employees and acting in a host of other areas, not targeted at labor or employment.

Additionally, the General Counsel attempts to assert that because the lawsuit filed against CWC contains allegations *concerning* “its members, agents, representatives, employees, and others acting in concert with it,” it somehow was brought against the individual Charging Parties as well. (Opp’n at 6-7) (emphasis added). This is completely misguided. Nowhere in the lawsuit filed against CWC or WHA were any of the individual Charging Parties named or even referenced. Instead, the references to CWC and WHA’s members, agents, employees, and other representatives were specifically incorporated in order to include those acting on behalf of these organizations under a theory of *respondeat superior*. For this Board to find that such a reference restrains and coerces Section 7 rights of non-employees and private, third-parties would completely destroy the established common law claim of defamation between private entities. For

² The General Counsel also notes that *J.A. Croson* was decided under a panel that was not properly constituted and thus is not established Board precedent.

all of these reasons, Respondents' Motion for Summary Judgment must be granted because CWC and WHA are not afforded the protections of the NLRA.

Conclusion

The General Counsel has not demonstrated that there exists any genuine issue of material fact as to preclude the Board from granting summary judgment in favor of Respondents MVP and Workforce because: (1) the CWC-Related Charges were not timely filed under Section 10(b) of the NLRA and thus those claims are barred; and (2) CWC and WHA are not entities covered and protected by the NLRA. For these reasons, it is indisputable that the Board should grant Respondent's Motion for Summary Judgment.

Respectfully Submitted,

PERSONNEL STAFFING GROUP, LLC
d/b/a/ MOST VALUABLE PERSONNEL,
and MVP WORKFORCE, LLC

By: 

One of their Attorneys

Elliot Richardson
Britney Zilz
Alison M. Field
KOREY RICHARDSON LLC
20 S. Clark Street, Suite 500
Chicago, IL 60603
P: (312) 372-7075