



**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
**Region Four**  
**615 Chestnut Street - Seventh Floor**  
**Philadelphia, PA 19106-4404**

Telephone: (215) 597-7601  
Fax: (215) 597-7658

November 15, 2016

Robert Giannasi, Chief Administrative Law Judge  
National Labor Relations Board  
Division of Judges  
1015 Half Street SE  
Washington, DC 20570

Re: Diversco, a wholly-owned subsidiary of  
ABM Onsite Services, Case 04-CA-177909

Dear Judge Giannasi:

I am attaching Counsel for the General Counsel's Opposition to Motion to Postpone in the above-captioned matter. A copy of this document has been served on the persons below by e-mail.

Very truly yours,

David G. Rodriguez  
Field Attorney

cc:

Maurice Baskin, Esq. (mbaskin@littler.com)

Michael R. Kopac III, Esq. (michaelrkopac@comcast.net)

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR  
RELATIONS BOARD REGION 4**

**DIVERSCO, INC., a wholly-owned subsidiary of  
ABM ONSITE SERVICES, INC.**

**And**

**Case 04-CA-177909**

**BAKERY, CONFECTIONERY, TOBACCO  
WORKERS AND GRAIN MILLERS LOCAL 492**

**OPPOSITION TO MOTION TO POSTPONE HEARING**

Pursuant to Section 102.16(a) of the Board's Rules and Regulations, Counsel for the General Counsel files this motion opposing Respondent's Motion to Postpone Hearing.

On October 17, 2016, the Regional Director of Region Four of the National Labor Relations Board issued a Complaint and Notice of Hearing (the Complaint) alleging, in part, that Respondent violated Section 8(a)(3) of the Act by suspending and discharging its employee Angel Rivera. The Complaint scheduled the hearing to commence on November 30, 2016.

On November 3, 2016, Respondent filed an Answer to the Complaint that raised, for the first time, the affirmative defense that Rivera was a supervisor as defined in Section 2(11) of the Act. On November 14, 2016, Respondent filed a Motion to Postpone Hearing that listed the following grounds in support of its request: (1) the need to comply with Counsel for the General Counsel's Subpoena and Motion for a Bill of Particulars concerning Respondent's affirmative defense; (2) the fact that Respondent has recently retained new outside counsel to litigate the instant case; (3) other ongoing litigation regarding overtime regulations; and (4) ongoing settlement negotiations regarding the instant case.

Respondent has been represented by in-house counsel since the early stages of the investigation. On June 28, 2016, the Region formally requested Respondent's position on whether

Rivera was a supervisor as defined in the Act. On August 5, 2016, Respondent stipulated that Rivera was not a statutory supervisor. Respondent has had notice of this supervisory issue for months, had ample opportunity to investigate the issue, and instead decided to stipulate that Rivera was an employee as defined in the Act.

Regarding the General Counsel's subpoena *duces tecum*, Counsel for General Counsel objects to Respondent's characterization of it as overbroad and burdensome. The subpoena is limited in scope and requests documents Respondent likely gathered during its investigation of the underlying unfair labor practice charge. In addition, the subpoena was issued on November 9, 2016—fully three weeks prior to the scheduled hearing date. Finally, Respondent has not contacted Counsel for the General Counsel to discuss limiting the subpoena in any way.

Counsel for the General Counsel only recently became aware of Respondent's decision to retain outside counsel. However, Respondent's in-house counsel has been aware of the Region's decision to issue Complaint in this matter since early September. At that time, Respondent expressed its intent to retain outside counsel. Respondent had ample opportunity to investigate the allegations in the Complaint and prepare for litigation long before the Complaint issued on October 17, 2016.

Regarding Counsel for Respondent's other ongoing litigation, Counsel for the General Counsel also contends that this forms insufficient grounds to warrant postponement. Littler Mendelson is a very large firm with extraordinary resources and, with all due respect, another partner or associate of the firm is almost certainly available to handle the litigation in this matter, absent settlement.

Finally, Counsel for the General Counsel opposes postponing the hearing due to the high priority of the unfair labor practices alleged in the Complaint. The allegations in the Complaint involve the discharge of a lead employee organizer in the midst of an organizing drive by the

Charging Party Union. As a result of the discharge, the Union's organizing campaign has completely stalled. In view of the impact of Respondent's conduct on employees' exercise of their Section 7 rights, the Region has recommended that the General Counsel request authorization from the Board to seek injunctive relief pursuant to Section 10(j) of the Act.

For the foregoing reasons, Counsel for the General Counsel requests that the hearing not be postponed and that Respondent's Motion be denied.

SIGNED at Philadelphia, PA, this 15<sup>th</sup> day of November, 2016.

Respectfully submitted,

*/s/ David G. Rodriguez*

*/s/ Patrice Tisdale*

---

David G. Rodriguez  
Patrice Tisdale  
Counsels for the General Counsel  
National Labor Relations Board, Region 4  
615 Chestnut St., 7<sup>th</sup> Floor  
Telephone: (215) 597-7657  
Emails: David.Rodriguez@nlrb.gov  
Patrice.Tisdale@nlrb.gov