

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

KISS ELECTRIC LLC

and

Cases 04-CA-164351,
04-CA-166954 and
04-CA-180051

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION #98

**THE GENERAL COUNSEL'S REQUEST FOR SPECIAL PERMISSION TO APPEAL AND
APPEAL FROM THE ADMINISTRATIVE LAW JUDGE'S
APPROVAL OF SETTLEMENT AGREEMENT**

Pursuant to Section 102.26 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel requests special permission to appeal to the Board the approval by Administrative Law Judge Ira Sandron of the Informal Settlement Agreement entered into by Respondent Kiss Electric LLC and Charging Party International Brotherhood of Electrical Workers, Local Union #98 (Union) over the objections of Counsel for the General Counsel. Because the settlement does not provide for backpay for the discriminatees, does not require the instatement of the one of the discriminatees, and does not include any provision for a default judgment, it is inadequate as a Board settlement. In short, it would be contrary to Board law and public policy to approve the settlement. Therefore, Counsel for the General Counsel respectfully requests that the Board reverse the ALJ and remand the case for a hearing on the allegations set forth in the Complaints.

I. BACKGROUND

A. Overview

Respondent is a residential and commercial electrical contractor based in Levittown, PA. Joseph Kiss is the owner. The Employer has been in business for about 17 years and serves Pennsylvania, New Jersey, and Delaware. It employs about 20 electricians and electrician helpers. Respondent has never been unionized. The Union has engaged in various organizing activities with respect to Respondent's employees in the past two years, including a petition for representation in Case 4-RC-137890, which resulted in a Board-run election described below.

Then, in Case 4-CA-153954, the Region issued Complaint on August 12, 2015 alleging that Respondent unlawfully discharged an employee for his Union activity in January 2015. A copy of the Complaint is attached as Exhibit 4. That case settled with a non-Board private agreement with the employee waiving reinstatement and receiving backpay. The private settlement did not contain a default provision and included a non-Admissions clause.⁴ The Union's conditional withdrawal of the charge was approved on November 25, 2015.

C. The Subject Charges

The subject charges involve Respondent's refusal to consider and hire five applicants based on their affiliation with the Union. The first two charges – 4-CA-164351 and 4-CA-166954 – involve Respondent's refusal to consider and hire applicants Thomas McAnally and Timothy Murphy in the fall 2015. A Consolidated Complaint issued in the two cases on April 29, 2016. Trial was originally scheduled for July 12, 2016, but later postponed at Respondent's request to September 21.

On July 12, 2016, the Union filed the charge in Case 4-CA-180051. This charge involved Respondent's refusal to again consider or hire McAnally and Murphy, as well as three new applicants – Joseph Narducci, Brian Shank, and Frank Zemczak. They had all applied for open advertised positions via online applications in June 2016. Respondent subsequently hired Thomas McAnally on June 23, 2016. He remains employed with Respondent, although he is presently out of work with a medical ailment. The Region found merit in the latter case, and Complaint issued on October 27, 2016.⁵ The three subject cases were then consolidated for a December 7, 2016 trial.

Thus, the Region found that within the last two years, Respondent repeatedly violated the Act during an organizational campaign, discharged a Union supporter, and refused to hire a series of Union applicants. All of these cases settled and there accordingly has been no formal adjudication as to Respondent's conduct. However, in the Region's estimation, this conduct demonstrates that Respondent is a repeat violator of the National Labor Relations Act.

⁴ In his Order, Judge Sandron mistakenly described the second settlement as a Board informal settlement.

⁵ The investigation into the third of the subject charges caused postponement of the September 21 trial date in the first two subject charges.

II. The Present Settlement

A. Reaching agreement

In the instant cases, Respondent, the Union, and Counsel for the General Counsel engaged in settlement discussions and Counsel for the General Counsel drafted an informal Board settlement agreement that addressed the allegations in the manner contemplated by the parties and included a standard default provision. This agreement included a preferential hire provision whereby two of the discriminatees would be interviewed and receive preference for the next available full-time electrician positions from the date of the agreement until May 29, 2017, and two other discriminatees would be considered fairly if more than two full-time positions arose. Respondent would also notify the Union Business Agent and the Region of open positions during that timeframe. Respondent and the Union agreed not to include the traditional remedy of immediate reinstatement to the four discriminatees who had not been hired. An appropriate backpay remedy was calculated and shared with Respondent and the Union. Respondent owed about \$3,700 to discriminatee McAnally and \$80 to discriminatee Murphy. The other applicants had interim earnings that exceeded backpay. At all times during negotiations, Counsel for the General Counsel conveyed the need to include a default provision in a Board settlement.⁶

Respondent and the Union agreed that Respondent would post a Board Notice and to the preferential hire provision described above. They also agreed on providing zero backpay to the alleged

⁶ General Counsel presented Respondent with terms including a non-Admissions clause and default provision limited in duration to six months. The following "Performance" language was inserted by Counsel for the General Counsel into the draft settlement:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the consolidated complaint previously issued in Cases 4-CA-164351 and 4-CA-166954 on April 29, 2016 and will reissue the complaint previously issued in Case 4-CA-180051 on October 27, 2016. Thereafter, for a period not to exceed six months from the date this Settlement Agreement is approved by the Regional Director, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaints. The Charged Party understands and agrees that the allegations of the aforementioned complaints will be deemed admitted and its Answers to such complaints will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement.

discriminatees and to exclude the default provision. They further insisted that their agreement be included in a Board settlement, not in a non-Board private settlement.

B. Judge Sandron's Approval

On December 2, 2016, the Union and Respondent submitted their signed settlement to Administrative Law Judge Ira Sandron. Exhibit 5. On December 5, Counsel for the General Counsel submitted a written opposition to the settlement because of the exclusions of default language and backpay. Exhibit 6. On December 6, Judge Sandron approved the settlement over the objection of Counsel for the General Counsel. Exhibit 7. In his decision, the Judge emphasized the importance of encourage settlements in lieu of litigation. He then analyzed the settlement pursuant to the *Independent Stave* standard and found it acceptable. He rejected Counsel for the General Counsel's contention that the Board's recent decision in *United States Postal Service*, 364 NLRB No 116 (2016) should govern this case, because in that case both the General Counsel and the Charging Party were opposed to the settlement agreement and in this case, the Charging Party seeks its approval.

III. General Counsel's Reasons for Opposing the Settlement

Counsel for the General Counsel opposes the settlement because it lacks critical elements that are regularly included in Board informal settlement in similar circumstances. Specifically, the settlement lacks backpay and any provision for default. It is important to note that what is contemplated here is a Board settlement, a public document. This is not a private agreement. Hence, the scrutiny of this agreement must be heightened to include considerations of public policy, not only the concerns of Respondent and the Charging Party. Such concerns are entrusted to the General Counsel and the Regional Directors. In this case, the Regional Director has determined that the remedy in the parties' settlement agreement is inadequate and therefore the agreement should not receive the Board's imprimatur. With a repeat offender like Respondent, the lack of default language is particularly disconcerting. Under present Board law, these missing provisions coupled with the Region's objection warrant rejection of the agreement.

A. The Board Should Apply the New Legal Standard for Reviewing Board Settlements and Not Approve this Board Settlement

The Board recently announced a new standard for review of Board settlements in *United States Postal Services*, supra. That case concerned a settlement agreement that had been proposed by a Respondent and approved by the Administrative Law Judge over the objections of both the General Counsel and Charging Party, i.e., a “consent order.” Although the circumstances differed from the instant case because the Charging Party was opposed to the consent order, the Board’s rationale was in many ways applicable to all review of public Board settlements as opposed to private non-Board settlements. Thus, as Counsel for the General Counsel argues here, the new standard should also apply to a situation where only the General Counsel opposes.

The new standard is whether the settlement “provides a full remedy for all of the violations alleged in the complaint.” Id. at 4. In *U.S. Postal Service*, a settlement agreed to by only Respondent was found deficient for its 6-month sunset default provision, where the Region sought an unlimited default provision based on its assessment of the violation. Importantly, the Board saw the default provision as an integral part of fully and substantively remedying the violations. Without a sufficient default provision, the violations were not remedied.

Similarly, in our case, default is at issue. Here, however, the issue is not the duration of the default provision, but the complete lack of any default provision. Thus, the settlement in our case is even more deficient than the one in *U.S. Postal Service*.

The Board in *U.S. Postal Service* specifically rejected the *Independent Stave* analysis for analyzing Board settlements, and stated that *Independent Stave* was formulated to deal with non-Board resolutions. 364 NLRB No. 116 at p. 2. This was a change from prior Board decisions that implicitly or explicitly extended the *Independent Stave* analysis to informal Board settlement agreements. *Arizona Daily Star*, 2011 WL 5869215 (2011); *Woodworkers Local 3-433 (Kimtruss Corp.)*, 304 NLRB 1, 2 (1991). Accordingly, as this case involves a Board resolution, the *U.S. Postal Service* standard should be applied. Under this standard, the current settlement should be rejected because it

fails to provide all the relief to which the aggrieved parties would be entitled -- it does not provide for backpay at all and does not account for the event of default.

A Board settlement does not merely resolve a private dispute, but upholds the Board's policies and safeguards the public interest. See *Flint Iceland Arenas*, 325 NLRB 318 (1998) (recognizing that in some cases a "greater weight must be accorded the need to vindicate the public interest implicated in the many complaint allegations not addressed by the settlement.") More than just the present case is at stake. More than just the present parties are impacted. The Board will not approve any settlement that is at odds with the purposes of the Act or the Board's policies. *IBEW Local 112*, 992 F.2d 990, 992-93 (9th Cir. 1993). For a settlement to be entitled to the imprimatur of a Board settlement, it must effectively remedy the allegations and carry out the Board's mission. See *U.S. Postal Service*, supra, slip op. at 3 ("[A] proposed order protects the public interest and effectuates the purposes and policies of the Act *only* (emphasis added) if it provides a full remedy for all of the violations alleged in the complaint"). A weak or non-effective settlement does not adequately dissuade respondents from violating the Act and disservices the public. A Board Notice informs employees that they have rights under the Act and those rights will be protected; it is an announcement to employees that the NLRB has found that unlawful conduct has been effectively remedied. If a Board Notice lacks vital provisions such as making employees whole for lost wages, employees may be chilled from exercising their Section 7 rights.

In this case, the settlement agreement approved by the Judge is deficient in several respects.

1. *Lack of Backpay*

The settlement is inadequate because it contains no provisions for backpay. Backpay is one of the staple remedies in Board discharge and refusal to hire cases. See e.g., *Finishline Industries*, 181 NLRB 756, 758-59 (1970). With no backpay remedy, the public interest in the vindication of statutory rights is not advanced nor are policies of the Act effectuated. *Id.* at 759. The amount of backpay to which the discriminatees are entitled is approximately \$3,800. This liability has not been offset by instatement of Murphy. While the discriminatees and the Union may be willing to completely forego backpay because of the Union's private interests, the tradeoff here is not in the public interest and is

not reasonable. See *Frontier Foundries, Inc.*, 312 NLRB 73, 74 (1993) (rejecting a non-Board settlement that provided only 6 percent backpay, even though it also provided for additional amounts as “liquidated damages,” allegedly to avoid being taxed as income). The absence of backpay, in the context of the objection of Counsel for the General Counsel, favors disapproval of the agreement. See *id.* (Board rejects a non-Board settlement “because the settlement amount is so clearly unreasonable, and in light of the General Counsel’s opposition.”)

Judge Sandron’s reliance on *Oil Capitol Sheet Metal*, 349 NLRB 1348 (2007), and its requirement that the General Counsel show some evidence that the discriminatees would have worked for the employer, is misplaced. The Judge suggested that the complete absence of backpay is justified by the possibility that the Union salts would not have worked long for Respondent. Assuming that *Oil Capitol* has any relevance in evaluating settlement agreements, the fact that discriminatee Thomas McAnally was hired by Respondent on June 23, 2016 and continues to be employed is a strong indication that he would have worked with Respondent for a significant length of time had he been hired when the discrimination against him first occurred (in November 2015). Moreover, the issue here is not how long the discriminatees would have worked for Respondent but that Respondent refused to hire them due to their Union affiliation. They are entitled to a make-whole remedy. Although the Board has approved a fraction of calculated backpay in the past, in non-Board settlements, the Board has only done so when the employees were reinstated. See *Independent Stave*, 287 NLRB at 743 (non-Board settlement agreement approved despite lack of notice and 10-percent backpay because, among other reasons, it required immediate reemployment with retroactive seniority, which “demonstrated to other employees a recognition of their statutory rights involved”). In contrast here, the settlement provides that applicant Murphy forego backpay altogether without instatement in a Board settlement. As Respondent only hired one applicant, McAnally, and did not offer instatement to remaining the discriminatees, a waiver of all backpay owed is inadequate in a Board settlement. See e.g., *International Shipping Agency*, 2015 WL 1802717 (2015) (Board revocation of ALJ’s approval of settlement due to low backpay with no reinstatement); *Michels Corp.*, 2012 WL 6625274 (2012) (reinstatement is an important factor in deciding whether to approve settlement with insufficient backpay); *Frontier Foundries, Inc.*, *supra*, 312 NLRB at 74.

2. *Lack of Default Provision*

As noted in *U.S. Postal Service*, a default provision is a substantive term of a Board settlement. A provision for default is vital to ensuring that allegations once settled remain settled and need not be re-litigated. Along with the Board's holding in *U.S. Postal Service*, the General Counsel has also provided guidance on this issue, stating that Board settlements should include default language in the "Performance" requirements of the settlement. *GC Memorandum 11-04* (January 12, 2011) instructed Regions to routinely include default language in all informal settlement agreements. The reasons for including such language are to ensure that charged parties and respondents comply with the agreements and that, in the event of an uncured breach, the General Counsel is not put in the position of having to expend resources litigating a settled issue. Uncured breaches of informal settlement agreements in the absence of default language would necessitate preparing for trial twice -- once before the agreement was reached and again after it was breached, when the passage of time could adversely affect litigation.

GC Memorandum 11-10 (March 30, 2011) gave Regional Directors limited discretion to negotiate changes to default judgment language by agreeing to temporal or geographic limits on its enforcement provided the Region was confident that the chances of default were low and that there is a substantial basis for doing so. More recently, in *OM Memorandum 14-48* (April 10, 2014) the General Counsel stated that there is a "clear preference" to include default language in all informal settlements.

Default language is especially vital when settling with a party that has already been afforded informal settlements. Short of demanding a formal settlement, General Counsel must insist on progressively more stringent terms for each successive informal settlement. Here, the instant cases represent the third series of charges against Respondent that the Region found meritorious since early 2015. Although no charge has been formally adjudicated, in the Region's estimation, Respondent has repeatedly violated the Act, and prior settlements have not deterred it from committing unfair labor practices.⁷ In this case, to deter Respondent from continued violations of the Act, the Region is

⁷ Judge Sandron stated that "The General Counsel does not specifically contend that the Respondent's past conduct militates against approving the agreement." However, in opposition to approval, Counsel specifically noted that the subject cases represent the third series of merit charges against Respondent and that "to protect the integrity of the Act and deter Respondent from continued violations of the Act, General Counsel must insist on

insisting on more stringent settlement terms than the earlier two settlements entered into by Respondent. Because the prior two settlements omitted default language and were not effective in deterring further unfair labor practices, it is necessary to require such language here.

The absence of standard default language leaves a substantive hole in this settlement, making it an inadequate Board remedy. See generally, *Courier-Journal*, 342 NLRB 1148, 1149 (2004) (holding that encouraging peaceful settlement of disputes can only be achieved if the parties to agreements cannot later revive those disputes). The Board in *U.S. Postal Service* specifically noted, in addressing the importance of default language, that as a general matter, “a case that has been resolved should stay resolved.” *U.S. Postal Service*, slip op. at 3 fn. 8. Respondent should have no problem with default language if it truly intends to comply with its settlement obligations. Rather than obstruct settlement efforts, a default provision helps all parties avoid the cost and delay associated with subsequent litigation of issues and allegations that are settled. It is respectfully submitted that the Judge’s application of *Independent Stave* and approval of the settlement without default language, in the absence of good cause to stray from the General Counsel’s policies, should be rejected by the Board.

B. Even Assuming that Independent Stave Applies, the Board Should Not Approve the Board Settlement

Even considering this situation under the *Independent Stave Co.* standard, the facts of this case militate against approving the settlement agreement. *Independent Stave* provides that the Board will approve private settlements based on four criteria:

- (1) Whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and *the position taken by the General Counsel regarding the settlement* (emphasis added);
- (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation;
- (3) whether there has been any fraud, coercion, or duress by any of the parties in reach the settlement; and
- (4) whether the respondent has

more stringent settlement terms.” Counsel cannot say for certain whether Respondent is inclined to violate the Act again. The important point, however, is Respondent’s recent track record and the lack of a settlement that acknowledges that track record.

engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes. *Independent Stave Co.*, 287 NLRB 740, 743 (1987).

Here, contrary to the Judge's analysis, three of the four factors support rejecting the settlement: the General Counsel opposes, the settlement is not reasonable in light of the violations, and the settlement does not account for Respondent's history of violations.⁸ Although the Charging Party and Respondent agree to the settlement, the General Counsel objects. Counsel for the General Counsel's standing amongst the three parties to any case is not on par with the other two parties; considerably more weight is given to the General Counsel's position. *Frontier Foundries*, supra, 312, 74 (1993); *Fishback/Lord Electric Co.*, 300 NLRB 474, 476-77 (1990). When the settlement is opposed by the General Counsel, the Board has consistently held that this opposition is a "powerful reason to disregard the settlement." See *Beverly California Corp. v. NLRB*, 253 F.3d 291, 295 (7th Cir. 2001), citing *IBEW Local 112*, 992 F.2d 990, 992-93 (9th Cir. 1993); *Clark Distribution Systems*, 336 NLRB 747, 750 (2001); *Flint Iceland Arenas*, 325 NLRB 318, 319 (1998); *Fishback/Lord Elec. Co.*, supra; *Oil, Chem. & Atomic Workers, Int'l*, 288 NLRB 20, 22 (1988). The reason for giving such "great weight" to the General Counsel's position on settlement is that such agreements are not solely the concern of the litigants. *Service Merchandise Co.*, 299 NLRB 1125, 1125-26 (1990); *Frontier Foundries*, supra (giving considerable weight to the General Counsel's opposition to settlement). On the contrary, such agreements implicate the enforcement of the Act, which is a public, not individual, concern.

As fully discussed above, the settlement is not reasonable in light of the violations because it lacks backpay and a default provision. Without these critical provisions under these circumstances, it fails to fully safeguard the public interests. The Board is tasked with remedying and deterring unfair labor practices on behalf of the public. Once a charge is filed, the General Counsel proceeds, not in vindication of private rights, but as the representative of an agency entrusted with the power and the duty of enforcing the Act for the people. See e.g., *The Ingalls Steel Construction Co.*, 126 NLRB 584, fn. 1 (1960). As the Supreme Court recognized in *J.I. Case Co. v. NLRB*, 321 U.S. 332 (1944), the Board is not responsible for adjudicating private rights; rather, it is responsible for giving effect to the declared public policy of the Act, to "give paramount weight to the public interest affected by

⁸ As to the fourth element, there is no evidence of fraud, coercion, or duress.

withdrawal of the underlying charges.” *Retail Clerks International Association, Local Union No. 1288, AFL-CIO (Nickle's Pay-less Stores of Tulare County, Inc.)*, 163 NLRB 817, fn. 1 (1967).

The reasonableness of the remedy must be assessed against the risks inherent in litigation and the stage of the litigation. This is not a case that substantially provides a remedy for the refusal to hire allegation. As discussed above, the settlement does not offer the applicants instatement as a reasonable compromise for no backpay, and the complete absence of any backpay award in this settlement is glaring. In *Frontier Foundries, Inc.*, supra, 312 NLRB at 74 (1993), the Board did not approve a non-Board settlement where the backpay award was too small. The Board was “not persuaded that the General Counsel's chances of success are so abysmally low that it would be reasonable to accept a 6 percent settlement.” *Id.* As in *Frontier Foundries*, the Board should not approve this settlement because there is no backpay and no instatement for one of the applicants. The public is ill-served when the agency entrusted to enforce the Act approves a Board settlement with no backpay and no instatement for alleged discriminatees. *Finishline Industries*, 181 NLRB at 758.

As to the final *Independent Stave* element, although there are no adjudicated cases finding violations against Respondent, based on the Region's investigations, Respondent has demonstrated a propensity to violate the Act. Its recent history of violating the Act argues against approval of this settlement agreement without default language. Since the passage of the National Labor Relations Act, it has been the Board's role with respect to settlements to end labor disputes and so far as possible extinguish all the elements giving rise to them. *Wallace Corp. v. NLRB*, 323 U.S. 248, 253 (1944). Accordingly, the General Counsel argues that even under an *Independent Stave* standard, the Judge's approval of the settlement agreement should not stand.⁹

IV. CONCLUSION

In these circumstances, where there is a Respondent that has settled numerous merit unfair labor practice cases, a new Board settlement without a default provision and without backpay fails to

⁹ It bears emphasis that the Region is not opposed to the parties settling the case with a private agreement, so long as it does not contain the Board's imprimatur. Thus, the Region would strongly consider approving a non-Board agreement similar in every other respect to the one at issue.

provide a necessary deterrent and serve the public interest. Accordingly, this settlement should be rejected. The *U.S. Postal Service* standard should govern here, but even under *Independent Stave*, this agreement does not pass muster. General Counsel respectfully requests that the Board grant the request for special permission to appeal, revoke Judge Sandron's approval of the settlement, and remand this matter for further processing.

Signed at Philadelphia, Pennsylvania this 23rd of December 2016.



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

KISS ELECTRIC, LLC

and

Cases 04-CA-138564
04-CA-139062
04-CA-139958 and
04-CA-140666

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 98

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

International Brotherhood of Electrical Workers, Local 98, herein called the Union, has charged in Cases 04-CA-138564, 04-CA-139062, 04-CA-139958, and 04-CA-140666, respectively, that Kiss Electric, LLC, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, **ORDERS** that these cases are consolidated.

These cases having been consolidated, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 4-CA-138564 was filed by the Union on October 8, 2014, and a copy was served by first class mail on Respondent on October 14, 2014.

(b) The amended charge in Case 4-CA-138564 was filed by the Union on December 18, 2014, and a copy was served by first class mail on Respondent on December 18, 2014.

(c) The charge in Case 4-CA-139062 was filed by the Union on October 20, 2014, and a copy was served by first class mail on Respondent on October 21, 2014.

(d) The amended charge in Case 4-CA-139062 was filed by the Union on December 19, 2014, and a copy was served by first class mail on Respondent on December 19, 2014.

(e) The charge in Case 4-CA-139958 was filed by the Union on October 31, 2014, and a copy was served by first class mail on Respondent on October 31, 2014.

Exhibit 1

6.

1.

7.

8.

9.

_____ Exhibit

(f) The amended charge in Case 4-CA-139958 was filed by the Union on December 19, 2014, and a copy was served by first class mail on Respondent on December 19, 2014.

(g) The charge in Case 4-CA-140666 was filed by the Union on November 12, 2014, and a copy was served by first class mail on Respondent on November 13, 2014.

(h) The first amended charge in Case 4-CA-140666 was filed by the Union on December 3, 2014, and a copy was served by first class mail on Respondent on December 3, 2014.

(i) The second amended charge in Case 4-CA-140666 was filed by the Union on December 19, 2014, and a copy was served by first class mail on Respondent on December 19, 2014.

2. (a) At all material times, Respondent, a Pennsylvania limited liability company with a facility at 5921 Bristol-Emilie Road, Levittown, Pennsylvania, herein called the Shop, has been an electrical contractor in the construction industry.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), purchased and received at the Shop goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions with Respondent set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Joseph Kiss	—	Owner
Keith Truskin	—	Chief Financial Officer
Bob Greenstreet	—	Field Manager
Michael Candy	—	Field Supervisor

5. (a) During the period from about August to early November, 2014, Respondent's employees discussed with each other and with Respondent their dissatisfaction with their wages.

(b) On or about October 17, 2014, Respondent, by Joseph Kiss, in a meeting at the Shop, threatened employees with layoffs and loss of work if they selected the Union as their collective-bargaining representative.

(c) On or about October 27, 2014, Respondent, by Keith Truskin, at the Shop, interrogated an employee concerning the employee's Union sympathies.

(d) In late October or early November, 2014, Respondent's employees, with the assistance of the Union, sent résumés to non-Union employers who advertised job openings.

(e) On or about November 7, 2014, Respondent created the impression among its employees that their Union activities were under surveillance by posting in the Shop the résumés referred to above in subparagraph (d) with disparaging remarks against the employees.

6. (a) On or about September 19, 2014, Respondent discharged its employee Adam Biel.

(b) On or about October 1, 2014, Respondent issued a written warning to its employee Prince Paye.

(c) Respondent engaged in the conduct described above in subparagraph (a) because Adam Biel: (1) as an outgrowth and continuation of the dissatisfaction of employees with their wages referred to above in subparagraph (a); and (2) to discourage other employees from engaging in protected, concerted activity.

(d) Respondent engaged in the conduct described above in subparagraph (b) because Prince Paye: (1) supported the Union; and (2) to discourage other employees from supporting the Union.

7. By the conduct described above in paragraphs 5(b), 5(c), 5(e), 6(a) and 6(c), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. By the conduct described above in paragraph 6(b) and 6(c), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 6(a), 6(c) and 8, the General Counsel seeks: (1) an Order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination; and (2) an Order requiring Respondent to submit the appropriate documentation to the Social Security Administration so that, when backpay is paid, it will be allocated to the appropriate periods. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Consolidated Complaint. The Answer must be **received by this office on or before January 21, 2015, or postmarked on or before January**

20, 2015. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this Regional Office.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **File Case Documents** tab, and then follow the detailed instructions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two (2) hours after 12:00 noon (Eastern Time) on the due date for the filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of the Answer to a Consolidated Complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may **not** be filed by facsimile transmission. If no Answer is filed, or if an Answer is untimely filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that at **10:00 am** on **March 10, 2015** and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania on this 7th day of January 2015.


DANIEL E. HALEVY
Acting Regional Director, Fourth Region
National Labor Relations Board

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

KISS ELECTRIC, LLC

and

Case 22-CA-136729

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 269

COMPLAINT AND NOTICE OF HEARING

International Brotherhood of Electrical Workers, Local 269, herein called the Union, has charged that Kiss Electric, LLC, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in this proceeding was filed by the Union on September 12, 2014, and a copy was served by first class mail on Respondent on September 15, 2014.

(b) The amended charge in this proceeding was filed by the Union on November 19, 2014, and a copy was served by first class mail on Respondent on November 20, 2014.

2. (a) At all material times, Respondent, a Pennsylvania limited liability company with a facility at 5921 Bristol-Emilie Road, Levittown, Pennsylvania, herein called the Shop, has been engaged as an electrical contractor in the construction industry.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), purchased and received at the Shop goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Exhibit 2

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_____ Exhibits

4. At all material times, the following individuals held the positions with Respondent set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Joseph Kiss	—	Owner
Erin Kiss	—	Vice President
Keith Truskin	—	Chief Financial Officer
Michael Candy	—	Field Supervisor

5. Respondent, by Michael Candy, engaged in the following conduct:

(a) On or about March 24, 2014, at the Tesla dealership job in Devon, Pennsylvania, told an employee who was wearing an undershirt and cap bearing the Union's name, that the employee was not permitted to wear those articles of clothing when the employee was working at the jobsite.

(b) On or about March 24, 2014 at the Shop: (1) told an employee that another employee was a "jerkoff" for being involved in Union organizing; (2) interrogated the employee concerning the Union activities of other employees of Respondent; (3) threatened employees with unspecified reprisals because they were seeking Union representation; (4) told employees that he was going to track down the employees who were involved in Union organizing activities; and (5) stated that he could not trust any of Respondent's employees.

(c) On or about March 28, 2014, at the Shop, asked an employee to send a letter to the Union renouncing the employee's interest in the Union, and threatened the employee with unspecified reprisals if the employee failed to do so.

(d) In late March 2014, a more precise date being unknown to the General Counsel, at a jobsite in Fairless Hills, Pennsylvania, threatened an employee that the business would shut down and then reopen under a different name if employees selected the Union as their bargaining representative.

(e) On or about March 31, 2014, near the entrance to the Shop, in the presence of a striking employee, told the employee that he should "beat [the employee's] ass."

6. In late March 2014, a more precise date being unknown to the General Counsel, at a jobsite in Fairless Hills, Pennsylvania, Respondent, by Joseph Kiss: (a) told an employee that another employee who was engaging in Union organizing activity was really fucking Respondent; (b) accused the second employee of disloyalty; and (c) threatened to "close shop before going Union."

7. By letter dated March 28, 2014, from Respondent's attorney to an employee, Respondent threatened the employee with discharge if the employee did not abandon his participation in a strike and return to work.

8. (a) On or about March 27, 2014, Respondent's employee, Tom Gianola, ceased work concertedly and engaged in a strike sponsored by the Union.

(b) On or about March 31, 2014, Respondent's employee Steve Flack ceased work concertedly and engaged in a strike sponsored by the Union.

(c) On or about May 19, 2014, Respondent discharged its employee Tom Gianola.

(d) On or about May 19, 2014, Respondent discharged its employee Steve Flack.

(e) Respondent engaged in the conduct described above in subparagraphs (c) and (d), because Tom Gianola and Steve Flack: (1) supported the Union; (2) were engaging in protected strike activity; and (3) to discourage other employees from engaging in Union activities.

9. By the conduct described above in paragraphs 5, 6, and 7, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10. By the conduct described above in paragraphs 8(c), 8(d) and 8(e), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 8 and 10, the General Counsel seeks: an Order (1) requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination; and (2) requiring Respondent to submit the appropriate documentation to the Social Security Administration so that, when backpay is paid, it will be allocated to the appropriate periods. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Complaint. The Answer must be **received by this office on or before January 30, 2015, or postmarked on or before January 29, 2015.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the Answer with this Regional Office.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at

<http://www.nlr.gov>, click on the **File Case Documents** tab, and then follow the detailed instructions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two (2) hours after 12:00 noon (Eastern Time) on the due date for the filing, a failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an Answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of the Answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may **not** be filed by facsimile transmission. If no Answer is filed, or if an Answer is untimely filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that at **10:00 am** on **March 10, 2015** and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this [Consolidated] Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania on this 16th day of January 2015.


DENNIS P. WALSH
Regional Director, Fourth Region
National Labor Relations Board

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

Kiss Electric, LLC

**Cases 04-CA-138564,
04-CA-139062,
04-CA-139958,
04-CA-140666, and
22-CA-136729**

Subject to the approval of the Regional Director or Administrative Law Judge for the National Labor Relations Board, the Charged Party and the Charging Parties **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in all locations at its 5921 Bristol-Emilie Road, Levittown, Pennsylvania facility where employee notices are ordinarily posted. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSIONS CLAUSE — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

BACKPAY — Within 14 days from approval of this agreement, the Charged Party will make whole the employees named below by payment to each of them the amount opposite each name. The Charged Party will make appropriate withholdings for each named employee. No withholdings should be made from the interest portion of the backpay.

Steve Flack - \$2,000.00

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case, including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If either Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue the Complaints in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

Exhibit 3

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No /s/ JFK
 Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt of the Charged Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Parties do not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned cases provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party Kiss Electric LLC		Charging Party International Brotherhood of Electrical Workers, Local Union No. 269, AFL-CIO	
By: Name and Title	Date	By: Name and Title	Date
/s/ Joseph Kiss	4/14/15	/s/ Andrew L. Watson, Attorney	4/15/15
		Charging Party International Brotherhood of Electrical Workers, Local Union No. 98, AFL-CIO	
		By: Name and Title	Date
		/s/ Regina Hertzog, Attorney	4/15/15
Recommended By:	Date	Approved By:	Date
/s/ Edward J. Bonett, Jr. Edward J. Bonett, Jr. Field Attorney	4/17/15	/s/ Dennis P. Walsh	4/17/15

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL remove from our files all references to the discharges of Tom Gianola, Steve Flack, and Adam Biel, and **WE WILL** notify them in writing that this has been done and that their discharges will not be used against them in any way. Tom Gianola, Steve Flack, and Adam Biel waive any rights to be reinstated.

WE WILL pay employee Steve Flack the agreed-upon sum for lost wages and benefits.

WE WILL remove from our files the discipline we issued to employee Prince Paye on October 1, 2014, and **WE WILL** notify Paye that this discipline will not be used against him in any way.

Kiss Electric LLC

(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Telephone: (215)597-7601
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

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

KISS ELECTRIC, LLC

and

Case 04-CA-153954

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 98

COMPLAINT AND NOTICE OF HEARING

International Brotherhood of Electrical Workers, Local 98, herein called the Union, has charged that Kiss Electric, LLC, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 *et seq.*, herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 4-CA-153954 was filed by the Union on June 10, 2015, and a copy was served by first class mail on Respondent on June 11, 2014.

2. (a) At all material times, Respondent, a Pennsylvania limited liability company, with a facility at 5921 Bristol-Emilie Rd, Levittown, Pennsylvania, herein called the Shop, has been engaged as an electrical contractor in the construction industry.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), purchased and received at the Shop goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of

Exhibit 4

counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If the Answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of the Answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such Answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the Answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The Answer may **not** be filed by facsimile transmission. If no Answer is filed, or if an Answer is untimely filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that at **10:00 am** on **November 18, 2015** and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board in a hearing room of the National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania on this 12th day of August, 2015.



HAROLD A. MAIER

Acting Regional Director, Fourth Region
National Labor Relations Board

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT
Approved by an Administrative Law Judge

IN THE MATTER OF

Kiss Electric, LLC

Cases 04-CA-164³51,
04-CA-166954 and
04-CA-180051

Subject to the approval of the Administrative Law Judge for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — Upon approval of this Agreement and receipt of the official Notices from the Region, which may include Notices in more than one language as deemed appropriate by the Regional Director, the Charged Party will sign and date those Notices and immediately post them in all locations at its 5921 Bristol-Emilie Road, Levittown, Pennsylvania facility where employee notices are ordinarily posted. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned cases, including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other cases or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — In the event Counsel for the General Counsel fails or refuses to become a party to this Agreement, and if in the Administrative Law Judge's discretion it will effectuate the policies of the National Labor Relations Act, the Administrative Law Judge, after providing the opposing party an opportunity to state on the record or in writing its reasons for opposing the Agreement, may approve the Agreement. Any party aggrieved by the ruling of the Administrative Law Judge approving the Agreement may ask for leave to appeal to the Board as provided in Section 102.26 of the Board's Rules and Regulations.

NON ADMISSION — By entering into this settlement, the Charged Party does not admit that it has violated the National Labor Relations Act.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office or any other Board agent to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____
 Initials

No _____
 Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Administrative Law Judge, or if Counsel for the General Counsel does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the Board has sustained the

Exhibit 5

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FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to hire job applicants or refuse to consider for hire job applicants because of their membership in International Brotherhood of Electrical Workers, Local 98, or any other union.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE HAVE hired Thomas McAnally.

WE WILL interview Joseph Narducci and Frank Zemczak and, if qualified for the positions, offer them the next full-time electrician positions that become available until May 29, 2017

WE WILL consider Brian Shank and Timothy Murphy, in that order, for hire on a non-discriminatory basis for any full-time electrician positions beyond the first two positions that become available until May 29, 2017, and **WE WILL** consider anyone who applies after that period fairly regardless of Union status.

WE WILL notify IBEW Local 98 Business Agent Victor Monaco, the Regional Director of Region Four of the National Labor Relations Board, and the Board Agent responsible for the subject cases via email of all full-time electrician positions that become available until May 29, 2017.

Thomas McAnally and Timothy Murphy have waived any entitlement to lost wages and benefits. Joseph Narducci, Brian Shank, and Frank Zemczak earned interim wages that exceeded any wages and benefits they may have been owed by Kiss Electric.

WE WILL remove from our files all references to the failure to consider or hire Timothy Murphy, Joseph Narducci, Brian Shank, and Frank Zemczak and **WE WILL** notify them in writing that this has been done and that the failure to consider or hire them will not be used against them in any way.

Kiss Electric LLC

(Employer)

Dated: _____

By: _____

(Representative)

(Title)

AS
SJH

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Telephone: (215)597-7601
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

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

KISS ELECTRIC LLC

And

Cases 04-CA-163451, 04-CA-
166954, and 4-CA-180051

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION #98

OPPOSITION TO JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT

Pursuant to Section 102.24(a) of the National Labor Relations Board's Rules and Regulations, Counsel for General Counsel (hereafter, General Counsel) respectfully files this Motion in Opposition to the joint motion for approval of settlement agreement (hereafter, the joint motion) filed on December 2, 2016, by Kiss Electric LLC (hereafter, Kiss Electric, LLC) and the International Brotherhoods of Electrical Workers, Local Union # 98 (hereafter IBEW Local 98).

The General Counsel opposes the joint motion by Kiss Electric and IBEW Local 98 to approve a bilateral settlement agreement of the above referenced cases because the proposed settlement is deficient as a Board settlement in two respects: (1) the joint motion does not contain the standard default language for Board settlement agreements; and (2) it does not contain any form of backpay.

I. RESPONDENT'S HISTORY OF UNFAIR LABOR PRACTICE COMPLAINTS

It is important to note at the outset that the Region has found that Respondent has repeatedly violated the Act since early last year. Briefly, the first series of merit cases were in Cases 4-CA-138564, 4-CA-139062, 4-CA-139958, and 4-CA-140666. On January 7, 2015, the Region issued Complaint in these cases alleging Respondent: (1) violated Section 8(a)(1) and (3) of the Act by disciplining an employee because of the employee's Union activities; and (2) violated Section 8(a)(1) of the Act by discharging an employee because of his protected, concerted activities, threatening employees with job loss, interrogating employees about Union sympathies, creating the impression of surveillance, and other coercive statements during an organizing campaign. On January 16, 2015, the Region issued a Complaint in Case 22-CA-136729 alleging Respondent violated Section 8(a)(1) and (3) of the Act by discharging two employees who were on strike, threatening employees and making numerous coercive statements. On April 17, 2015, the Regional Director approved a trilateral (IBEW Local 269 was also involved) Board settlement agreement, which did not contain default language.

Exhibit 6

Exhibit _____

Then, in Case 4-CA-153954, the Region issued Complaint on August 12, 2015 on the allegation that Respondent unlawfully discharged an employee for his Union activity. That case settled with a non-Board settlement without default language.

With the latest round of merit cases, a Consolidated Complaint issued in Cases 04-CA-164351 and 04-CA-166954 on April 29, 2016. A hearing was scheduled for July 12, 2016, and was later rescheduled for September 21, 2016. On July 12, 2016, the Union filed the charge in Case 4-CA-180051 alleging Respondent violated Section 8(a)(1) and (3) of the Act by refusing to hire and consider for hire two Union applicants, and Complaint issued on these allegations on October 27, 2016. The new consolidated hearing is scheduled for December 7, 2016.

II. GENERAL COUNSEL'S REASONS FOR OBJECTING TO THE JOINT MOTION

On December 2, 2016, Kiss Electric and IBEW Local 98 submitted the current joint motion. The joint motion is deficient for two reasons. First and foremost, the settlement agreement does not contain standard default language typical of Informal Board settlements, especially with repeat offenders. It is the General Counsel's strong preference that Board settlements include default language in the "Performance" requirements of the settlement. Moreover, where a party repeatedly violates the Act, to best effectuate the Act and serve public policy, General Counsel must insist on more stringent terms for successive settlements. Here, the above cases represent the third series of merit charges against Respondent since early 2015. To protect the integrity of the Act and deter Respondent from continued violations of the Act, General Counsel must insist on more stringent settlement terms. Counsel for the General Counsel is guided by ICG 16-09 which directs Regional Directors to insist on default language in these circumstances. With the first two settlements omitting default language, there is a need to insist on such language here.

Secondly, General Counsel opposes the settlement agreement on the grounds that it does not include any backpay award. General Counsel's calculations estimate full remedy backpay to be \$3,787 for one of five discriminatees (Thomas McAnally) and approximately \$80 for a second (Timothy Murphy). With no backpay at all, this settlement would not constitute a full board remedy.

III. LEGAL ARGUMENT

The Board's recent analysis in *United States Postal Service and Branch 256(USPS)*, 364 NLRB No. 116 (August 27, 2016), should apply here. In that case, a settlement agreement approved by the Administrative Law Judge, over the objections of the General Counsel and the Charging Party, was deficient for omitting default language. The Board outlined that the appropriate standard for evaluating orders approving and incorporating the settlement terms proposed by a respondent, over the objections of the General Counsel and the charging party (also referred to as unilateral consent orders), "is whether the order provides a full remedy for all of the violations alleged in the complaint." *Id.* at 2. In *USPS*, the Board overruled the application of *Independent Stave Co.*, 287 NLRB 740, 743 (1987) to evaluate unilateral consent orders, and subsequent cases applying that standard to unilateral consent orders, and re-adopted the standard enunciated in *General Electric Co.*, 188 NLRB 855 (1971). *Id.* at 2-3.

The logic of *USPS* should extend to scenarios where the General Counsel objects to a joint motion to approve a Board settlement agreement. The public interest is served by having consistency for all employers in Board settlements. Parties should be free to negotiate less than a

full remedy in private agreements, but Board agreements should be held to a higher standard of providing a full remedy. It is also important to note that in *USPS* the Board made clear that *Independent Stave* analysis was “explicitly formulated to analyze non-Board settlement agreements.” *Id.* This language is a retreat from previous decisions that extended *Independent Stave* analysis to informal Board settlement agreements. *Woodworkers Local 3-433 (Kimtruss Corp.)*, 304 NLRB 1, 2 (1991). Accordingly, the *USPS* standard should be applied in this case since the parties seek a *Board* settlement.

Applying the *USPS* standard, the joint motion should be denied because it does not adequately provide a full remedy for all the violations alleged as it provides no backpay and no default language. The absence of standard default language makes the settlement agreement an inadequate board remedy. See *USPS*, slip op. at 4; see generally *Courier-Journal*, 342 NLRB 1148, 1149 (2004) (holding that encouraging peaceful settlement of disputes can only be achieved if the parties to agreements cannot later revive those disputes). If the General Counsel litigated the case to a successful conclusion, the Respondent would no longer be able to raise its defenses in subsequent litigation. Backpay is one of the staple remedies in Board discharge and refusal to hire cases. The Board has rejected non-Board settlements with inadequate backpay awards. See *Frontier Foundries, Inc.*, 312 NLRB 73 (1993) (rejecting a non-Board settlement that provided only 6 percent backpay, even though it also provided for additional amounts as “liquidated damages,” allegedly to avoid being taxed as income). Accordingly, the General Counsel opposes any joint motion to approve a Board settlement that does not contain full backpay and standard default language.¹

Counsel for the General Counsel posits that the *Independent Stave* standard does not apply here, given that this is a Board settlement and not a non-Board resolution. However, even if the *Independent Stave Co.* standard is applied, the facts of this case would argue against approving the joint stipulation. 287 NLRB 740, 743 (1987).

Independent Stave provides that the Board will approve consent orders based on four criteria:

- (1) Whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement;
- (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation;
- (3) whether there has been any fraud, coercion, or duress by any of the parties in reach the settlement; and
- (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

Independent Stave Co., 287 NLRB 740, 743 (1987).

In this instance, three of the four factors support denying the joint motion. Although the Charging Party and Respondent agree to the settlement, the General Counsel objects. Furthermore, the settlement is not reasonable in light of the violations because it does not contain any provisions for backpay, nor does it contain standardized default language. Although the Board has approved a fraction of the total backpay award in the past, this is an instance where

¹ Counsel for the General Counsel’s opposition here does not rule out the General Counsel recommending a withdrawal request be approved based on a non-Board agreement similar in every other respect to the one at issue.

Kiss Electric is demanding the aggrieved applicants forgo backpay altogether. Finally, Respondent has demonstrated a repeated propensity to violate the Act, with this now the third series of merit cases in less than two years. Respondent's history of meritorious unfair labor charges argues against approval of this settlement agreement without default language. A default judgment is important here in saving government resources and preventing further unlawful conduct. Accordingly, the General Counsel argues that even under an *Independent Stave* standard, the joint motion should be rejected.

IV. CONCLUSION

For the foregoing reasons, the General Counsel respectfully requests your honor to deny the joint motion to approve the settlement. The settlement fails to provide adequate backpay or standard default language. In these circumstances, an informal Board settlement agreement should not be approved over the General Counsel's objections.

Dated at Philadelphia, Pennsylvania this 5th day of December 2016.



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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

KISS ELECTRIC, LLC

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL #98

CASES 04-CA-164351
04-CA-166954
04-CA-180051

**ORDER GRANTING JOINT MOTION TO
APPROVE SETTLEMENT AGREEMENT**

On October 27, 2016 (all dates hereinafter occurred in 2016 unless otherwise indicated), the Regional Director issued an order consolidating complaints that alleges the Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to consider or hire as electricians Thomas McAnally, Timothy Murphy, Joseph Narducci, Brian Shank, and Frank Zemczak (the discriminatees). All of the allegations pertain to the Charging Party's "salting" program. The trial was scheduled to commence on December 7.

On December 3, the Charging Party and the Respondent filed a joint motion to approve their informal Board settlement agreement (the agreement). The motion represents that all of the discriminatees agree to its terms.

On December 5, the General Counsel filed an opposition to the motion, objecting to the agreement (opposition).

The Terms of the Agreement

The agreement is a standard informal Board settlement agreement approved by an administrative law judge, including notice-posting and a provision for my retaining jurisdiction until I am notified of compliance. The agreement contains a nonadmissions clause but no default language.

The notice to employees includes but is not limited to the following language:

WE WILL NOT refuse to hire job applicants or refuse to consider for hire job applicants because of their membership in International Brotherhood of Electrical Workers, Local 98, or any other union.

WE HAVE hired Thomas McAnally.

Exhibit 7

Exhibit

WE WILL interview Joseph Narducci and Frank Zemczak and, if qualified for the positions, offer them the next full-time electrician positions that become available until May 29, 2017.

WE WILL consider Brian Shank and Timothy Murphy, in that order, for hire on a nondiscriminatory basis for any full-time electrician positions beyond the first two positions that become available until May 29, 2017, and WE WILL consider anyone who applies after that period fairly regardless of Union status.

WE WILL notify IBEW Local 98 Business Agent Victor Monaco, the Regional Director of Region Four of the National Labor Relations Board, and the Board Agent responsible for the subject cases via email of all full-time electrician positions that become available until May 29, 2017.

Thomas McAnally and Timothy Murphy have waived any entitlement to lost wages and benefits. Joseph Narducci, Brian Shank, and Frank Zemczak earned interim wages that exceeded any wages and benefits they may have been owed by Kiss Electric.

WE WILL remove from our files all references to the failure to consider or hire Timothy Murphy, Joseph Narducci, Brian Shank, and Frank Zemczak, and WE WILL notify them in writing that this has been done and that the failure to consider or hire them will not be used against them in any way.

The General Counsel's Objections

The "[f]irst and foremost" objection (opposition at 2) is that the agreement does not contain standard default language. Additionally, the General Counsel objects because the agreement does not include backpay owed to two of the discriminatees (\$3,787 for McAnally, whom the Respondent has already hired; and \$80 for Murphy).

With regard to why default language should be required, the General Counsel cites three unfair labor practice complaints against the Respondent since January 2015 for the proposition that the Respondent has "repeatedly" violated the Act (*ibid*). All were the subjects of two informal Board settlement agreements that did not contain default language. The General Counsel has not averred that the Respondent violated the terms of either of those settlements. In the absence of a contrary representation by the General Counsel, I will assume that they contained nonadmissions clauses.

The General Counsel also cites *Postal Service*, 364 NLRB No. 116 (August 27, 2016), as authority for why lack of default language makes the proposed settlement agreement inadequate.

Analysis and Conclusions

Salting is a legitimate union organizing tactic typically involving authorizing members

to seek work with unorganized employers provided the worker agrees to engage in organizing efforts from within if hired. See *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85 (1995); *Tualatin Electric, Inc.*, 312 NLRB 139, 130 fn. 3 (1993), enfd. 84 F.3d 1202, 1203 fn. 1 (9th Cir. 1996).

Workers cooperating with their union by seeking nonunion employment and advancing the union's salting policies, if hired, are called "salts." *Oil Capitol Sheet Metal, Inc.*, 349 NLRB 1348, 1348 fn. 5 (2007). The Supreme Court has upheld the Board's determination that the definition of "employee" under §2(3) encompasses salts. *NLRB v. Town & Country Electric*, above, at 87; see also *Trustees of Columbia University in the City of New York*, 364 NLRB No. 90, slip op. at 6 (August 23, 2016).

As such, salts are entitled to reinstatement and backpay. However, in *Oil Capitol Sheet Metal*, above, at 1348-349, the Board distinguished between salts and other applicants for employment in terms of remedy: "[S]alts often do not seek employment for an indefinite duration; rather, experience demonstrates that many salts remain or intend to remain with the targeted employer only until the union's defined objectives are achieved or abandoned."

Accordingly, the Board held that in salt cases, the normal rebuttable presumption that the BP period should continue from the date of the discrimination until a valid offer of reinstatement has been made is not applicable. Therefore, the burden is on the General Counsel to present affirmative evidence that the salt/discriminate, if hired, would have worked for the employer for the backpay period claimed in the General Counsel's compliance specification. If the General Counsel fails to prove by affirmative evidence the reasonableness of a claim that the backpay period should run indefinitely, then the salt/discriminate is not entitled to reinstatement. *Id.* at 1349.

The Board has long recognized the important public interest in encouraging mutually-agreeable settlement in lieu of litigation. See *McKenzie-Willamette Medical Center (McKenzie-Williamette)*, 361 NLRB No. 7, slip op. at 1 (2014); *Hospital Perea Unidad*, 356 NLRB 1204, 1204 (2011); *Independent Stave Co.*, 287 NLRB 740, 741 (1987).

Independent Stave Co., above, is the lead case on acceptance of private non-Board settlement agreements. In later cases, the Board applied the *Independent Stave* criteria to both informal and formal settlements where one party objects. See, e.g., *K & W Electric Inc.*, 327 NLRB 70 (1998); *National Telephone Services, Inc.*, 301 NLRB 1 (1991).

In *Postal Service*, above, the Board overruled the application of *Independent Stave Co.* to a unilateral consent order, i.e., a settlement that the judge approves to which only the respondent has agreed, and to which both the General Counsel and the Charging Party have objected. Rather, the appropriate standard to be applied is "whether the order provides a full remedy for all of the violations alleged in the complaint." *Id.* at slip op. at 1. The Board concluded that the order's limitation on normal default language precluded a finding that it provided a fully remedy, and the consent order was set aside.

The General Counsel urges that the logic of *Postal Service* be extended to situations where the General Counsel objects to a joint motion by a respondent and charging party to approve a Board settlement agreement (opposition at 2-3). However, the Board in *Postal Service* emphasized the particular nature of consent orders, as opposed to settlement agreements:

The charging party and the respondent have not agreed to a private resolution of their dispute. Nor has any party seeking relief from the Board (whether the charging party or the General Counsel) agreed to accept a less-than-full remedy for any reason.

Id. at slip op. at 3; see also slip op. at 3 fn. 5 (in consent orders, “[T]here is no ‘agreement’ between any parties.”). The Board did not suggest an intention to expand its holding to settlement agreements between the charging party and the respondent to which the General Counsel objects, and in the absence of clear guidance from the Board to the contrary, I will apply *Independent Stave Co.*

As per *Independent Stave Co.*, all circumstances must be considered, but the four most important factors are:

- 1) Whether the charging party, the respondent, and any of the individual discriminatees have agreed to be bound, and the General Counsel’s position. The General Counsel’s opposition to the settlement is an important consideration weighing against acceptance but is not dispositive. See, e.g., *McKenzie-Willamette*, above at slip op. at 2; see also *Frontier Foundries, Inc.*, 312 NLRB 73, 74 (1993).

As previously stated, the Charging Party, the discriminatees, and the Respondent are satisfied with the terms of the agreement; only the General Counsel is not.

- 2) Whether the settlement is reasonable in light of the nature of the violations, the risks inherent in litigation, and the stage of the litigation.

I will discuss this below.

- 3) Whether there has been any fraud, coercion, or duress by any of the parties.

There is no claim of any such misconduct.

- 4) Whether the Respondent has engaged in a history of violations of the Act or breached previous settlement agreements.

The General Counsel does not specifically contend that the Respondent’s past conduct militates against approving the agreement. In any event, the prior complaints issued against the Respondent were the subjects of settlement agreements, presumably with nonadmissions clauses. As such, they are of no probative value in establishing previous violations of the Act. *Teamsters, Local Union 122 (August A. Busch & Co. of Massachusetts)*, 334 NLRB 1190, 1192 (2001); *Teamsters, Local 70 (C & T Trucking Co.)*, 191 NLRB 11, 11 (1971). The General Counsel has not contended that the Respondent breached those settlement agreements.

The ultimate consideration therefore becomes whether the agreement is reasonable in light of the nature of the violations, the risks inherent in litigation, and the stage of the litigation. I conclude in the affirmative for the following reasons.

Significantly, “[I]t is well established that approval of settlements under *Independent Stave* does not require that the remedies provided by the settlement be coextensive with the remedies that the Board would provide if the General Counsel were to prevail on all of the complaint allegations.” *McKenzie-Willamette*, above, slip op. at 3; see *Independent Stave Co.*, above, at 743.

An important consideration is that although salts are entitled to reinstatement and backpay, they do not enjoy the normal rebuttal presumption that they are entitled to backpay from the date of the discrimination until a valid offer of reinstatement has been made. If the General Counsel fails to prove by affirmative evidence the reasonableness of a claim that the backpay period should run indefinitely, then the salt/discriminatee is not entitled to reinstatement.

The Respondent hired McAnally after the charge relating to him was filed. The circumstances thereof are not in the record. However, if the case went to trial and McAnally was found to have been a discriminatee, the General Counsel would bear the burden at the compliance stage of establishing that he would still be employed if he were not a victim of discrimination. If not, then he would not be entitled to employment under the Act, and the Respondent could theoretically legally terminate his employment. See *Shambaugh and Son, L.P.*, 364 NLRB No. 26 (2016).

In this regard, the stage of the proceeding — prior to any adjudication on the merits — weighs in favor of approving the agreement. The Charging Party and the discriminatees, as well as the Respondent, have opted to for a mutually-acceptable agreement rather than face the inherent risk of losing at trial.

Moreover, McAnally has already been hired, and the agreement provides for preferential hiring for Narducci and Zemczak, and priority consideration for hiring for Murphy and Shank, thereby affording them certain benefits that they would not otherwise enjoy. In sum, all of the discriminatees have or will receive something of value from the agreement.

A final consideration weighing in favor of approving the agreement is the posting of a notice to employees, which advises them of their rights and names the alleged discriminatees, as well as their remedies. A notice-posting requirement in a settlement agreement is an important consideration in deciding whether the Board will approve it. *McKenzie-Willamette*, above, slip op. at 3; *Flint Iceland Arenas*, 325 NLRB 318, 319 fn. 4 (1998). This flows from the importance of communicating to other employees that they will be protected if they exercise their statutory rights. *Flint Iceland Arenas*, id.

In light of all of the above circumstances, I am satisfied that the agreement represents a reasonable approach to remedying the violations alleged in the complaint, despite the

absence of default language and of payment of backpay, and that my approval best effectuates the purposes of the Act.

Accordingly,

I GRANT the Joint Motion to Approve Settlement Agreement.

Dated: December 6, 2016



Ira Sandron
Administrative Law Judge

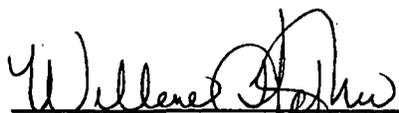
CERTIFICATE OF SERVICE

I certify I have served, by electronic mail on December 6, 2016, a copy of the foregoing Order Granting Joint Motion to Approve Settlement Agreement upon each party at the email addresses listed below:

Edward J. Bonett, Jr., Esq.
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Alan I. Model, Esq.
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Willene Heflin
Designated Agent

**UNITED STATES OF AMERICA
BEFORE THE EASTERN DISTRICT OF PENNSYLVANIA**

KISS ELECTRIC LLC

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION #98

Cases 04-CA-164351,
04-CA-166954 and
04-CA-180051

CERTIFICATE OF SERVICE

Copies of General Counsel's Request for Special Permission to Appeal and Appeal from the Administrative Law Judge's Approval of Settlement Agreement in the above matter have been served this 23rd day of December, 2016 by electronic mail to the parties listed below.

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Secretary to Regional Attorney