

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

BUDDY'S PARKING COMPANY, LLC

and

TEAMSTERS LOCAL 727

Case 13-CA-170510

GENERAL COUNSEL'S MOTION FOR DEFAULT JUDGMENT

The General Counsel, based on the facts set forth below and the attached documents, moves, pursuant to Section 102.24 of the National Labor Relations Board's Rules and Regulations (the Board's Rules), that the National Labor Relations Board (the Board) issue a Decision and Order, containing findings of fact and conclusions of law in accordance with the Section 8(a)(1) and (5) allegations of the Complaint in the above-captioned case (Complaint), and ordering Buddy's Parking Company, LLC (Respondent), to fully remedy the unfair labor practices found, and granting such other, further relief as may be proper in the circumstances.

In support of this Motion, the General Counsel shows and alleges that:

1. On February 25, 2016, Teamsters Local 727 (Charging Party) filed the charge in Case 13-CA-170510, alleging that Respondent engaged in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 29 U.S.C. Section 151 et seq. (the Act). A copy of the charge is attached as Exhibit 1.

2. On May 24, 2016, the Charging Party filed the amended charge in Case 13-CA-170510. A copy of the amended charge is attached as Exhibit 2.

3. On June 20, 2016, the Regional Director approved a bilateral informal Settlement Agreement and Notice to Employees (Settlement Agreement) as a resolution to the allegations in

the charge. The Settlement Agreement was signed by Respondent's Attorney, James O. Stola.

A copy of the Settlement Agreement is attached as Exhibit 3.

4. The Settlement Agreement contains a provision entitled "Performance," requiring immediate compliance with the Settlement Agreement's terms, and the following provision addressing the event of Respondent's non-compliance with the terms of the Settlement Agreement:

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 by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

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 issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel

5. On June 28, 2016, the Compliance Officer, by letter to Respondent, formally solicited Respondent's compliance with the terms of the Settlement Agreement (including Respondent's obligation to remit back dues to the Charging Party, post notices, and provide information to the Charging Party). A copy of that letter is attached as Exhibit 4.

6. Respondent did not certify its compliance in response to the June 28, 2016 letter.

7. On July 26, 2016, the Compliance Officer, by email to Respondent's attorney, notified Respondent that by not adhering to the affirmative provisions of the Settlement, Respondent was in non-compliance with the Settlement Agreement. A copy of that email is attached as Exhibit 5.

8. Pursuant to the July 26, 2016, email referenced above in paragraph 5, the Compliance Officer advised Respondent that unless full compliance with the Settlement Agreement was achieved within 14 days, the Regional Director would revoke the Settlement Agreement and issue the Complaint.

9. On August 11, 2016, the Compliance Officer, by email to Respondent's attorney, notified Respondent that more than 14 days had elapsed, and therefore he would recommend that the Regional Director revoke the Settlement Agreement and issue the Complaint absent immediate compliance. A copy of that email is attached as Exhibit 6.

10. Upon oral representations made by Respondent's attorney that full compliance was forthcoming, the Regional Director refrained from issuing a Complaint.

11. On about September 3, 2016, Respondent provided certifications of compliance with the notice posting and back dues payment provisions of the Settlement Agreement.

12. On October 3, 2016, the Compliance Officer, by email to Respondent's attorney, notified Respondent that because Respondent had still not provided information to the Charging Party as required by the Settlement Agreement, Respondent was in non-compliance with the

Settlement Agreement. The Compliance Officer reminded Respondent that Respondent had already received a notice of default. A copy of that email is attached as Exhibit 7.

13. Based upon further oral representations from Respondent's counsel that the required information was immediately forthcoming, the Regional Director again refrained from issuing the Complaint.

14. On about November 15, 2016, Respondent provided further information to the Union that brought Respondent into compliance with all provisions of the Settlement Agreement except one. Specifically, Respondent failed and refused to "respond to the Union's request for an updated 'change of location' form for the parking lot located at 100 Walton," as required by the Settlement Agreement.

15. Accordingly, Respondent was and remains in default of the Settlement Agreement.

16. Pursuant to the performance provision of the Settlement Agreement referenced above in paragraph 4, and upon the amended charge described above in paragraph 2, on November 23, 2016, the Acting Regional Director, pursuant to Section 10(b) of the Act and Sections 102.15 of the Board's Rules, issued a Complaint (Complaint), a copy of which is attached as Exhibit 8.

17. As referenced above in paragraph 4, the Settlement Agreement provides that in the event of non-compliance, Respondent will not contest the validity of the allegations made in the Complaint. The Settlement Agreement unequivocally sets forth that the only issue Respondent may raise before the Board is whether Respondent has defaulted on the terms of the Settlement Agreement. The Board has explicitly approved such a provision and found it enforceable. *Insulation Maintenance & Contracting, LLC*, 357 NLRB No. 50 (2011); *Chicago Parking Company*, 356 NLRB No. 72 (2011). Respondent is being afforded the opportunity to raise before the Board any issues with respect to its default.

18. As referenced above in paragraph 4, the Settlement Agreement provides that in the event of non-compliance, the Board may issue an order providing a full remedy for the violations found as is appropriate to remedy such violations and that a U.S. Court of Appeals Judgment may be entered enforcing the Board order. As a result of Respondent's default, the General Counsel seeks an Order requiring Respondent to fulfill all of its undertakings in the June 20, 2016 Settlement Agreement.

In view of the foregoing, the General Counsel respectfully moves that the Board:

- A. Find that Respondent has waived its right to file an answer to the Complaint under the terms of the June 20, 2016, Settlement Agreement; that all allegations of the Complaint be deemed to be true; and that no hearing is necessary regarding the allegations in the Complaint;
- B. Find that Respondent violated Section 8(a)(1) and (5) of the Act, as alleged in the Complaint;
- C. Issue a Decision and Order against Respondent containing findings of fact and conclusions of law based on, and in accordance with, the allegations of the Complaint, and provide a full remedy for the unfair labor practices alleged.

Dated at Chicago, Illinois this 4th day of January, 2017.

Respectfully Submitted

/s/ Michael Schorsch

Michael Schorsch
Counsel for the General Counsel
National Labor Relations Board, Region 13
Everett McKinley Dirksen Federal Courthouse
219 S. Dearborn, Suite 808
Chicago, Illinois 60604

Attachments