

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

ABLE BUILDING MAINTENANCE

and

Case 27-CA-168632

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 105**

**RESPONSE TO RESPONDENT'S OPPOSITION
TO MOTION FOR DEFAULT JUDGMENT**

Pursuant to Section 102.24 of the National Labor Relations Board Rules and Regulations, the General Counsel, by his undersigned Counsel, files this Response to Respondent's Opposition to the General Counsel's Motion for Default Judgment.

Respondent contends in its Opposition that General Counsel's Motion for Default Judgment is moot because on December 20, 2016, Respondent's Counsel sent to Union's Counsel, a list of union and non-union buildings and payroll reports for the time period September 2014 to October 2015.

Contrary to Respondent's assertions, Respondent has failed to provide all of the information requested in the Union's October 16, 2015 request. The building lists provided on December 20, 2016 are satisfactory and comply with the request for union and non-union building lists. However, the "payroll reports" that Respondent provided do not satisfy the request for "full payroll reports that include employees name, unique identifier, job title, union

membership status, wage rate, hours worked, location(s) worked, overtime rate, overtime worked, hire date and dues paid.”

The information provided on December 20, 2016 is deficient in the following manner. First, the Union’s request for a complete review of all payroll information would include an assortment of payroll records in the same manner the sample review did and would include an employee list, copies of actual pay stubs, and lists extracted from the payroll system. The records provided consisted only of a company-prepared Excel spreadsheet, instead of source documents from the payroll system. As such, there is no way of substantiating the quality of the information therein. Having been through the process of a sample review, in which the Respondent provided actual payroll records, and which prompted the October 16, 2015 request for a full review, the Union logically expected to receive the same type of documents for a complete payroll review.¹ Second, because the provided information consists of a company-prepared spreadsheet, the Union has no way of evaluating whether the information provided is complete. Third, the information provided in the 188 page Excel spreadsheet is protected, which prevents the Union from being able to search it, sort it or manipulate it in any way that would be required in doing a complete payroll review. An email from the Union’s Counsel regarding the inadequacy of the information provided is attached as Exhibit A. In addition, a review of the information forwarded on December 20, 2016 reveals that it does not include any information regarding locations at which employees worked, which was part of the Union’s request. Accordingly, Respondent has failed to fully comply with the Settlement, and General Counsel’s Motion is not moot.

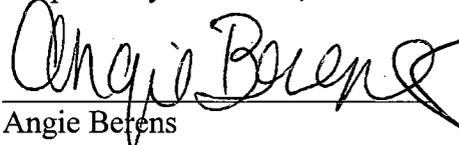
¹ As background, the Union did a sample payroll review on September 23-24, 2015, which revealed many discrepancies. Therefore, the Union requested to do a full payroll review/audit, which was provided for by Article 7 of the Collective Bargaining Agreement in effect at the time of the request on October 16, 2015. The Union also filed a grievance over payroll discrepancies found in the sample review.

Finally, it is undisputed that Respondent did not comply with the Settlement during the compliance period. Rather, Respondent provided the information discussed above on the same date on which it filed its Opposition, December 20, 2016. Moreover, as evidenced by the emails attached to Respondent's Opposition, the information was not sent to the correct individual. It was not sent to the Charging Party Union, or sent to the correct Counsel for the Union. Rather, it was sent to another attorney at the Union's Counsel's firm.

Based on the foregoing, General Counsel respectfully requests that the Board grant its Motion for Default Judgment.

Dated at Denver, Colorado, this 19th day of January, 2017.

Respectfully submitted,

A handwritten signature in black ink that reads "Angie Befens". The signature is written in a cursive style and is positioned above a horizontal line.

Angie Befens
Counsel for the General Counsel
National Labor Relations Board, Region 27
Byron Rogers Federal Office Building
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Attachments

Berens, Angie

From: Richard Rosenblatt <rosenblatt@cwa-union.org>
Sent: Tuesday, January 03, 2017 3:43 PM
To: Berens, Angie
Cc: Pena, Leticia; Beth Griffiths
Subject: Re: FW: Able Building Maintenance and Service Employees International Union, Local 105; NLRB Case No. 27-CA-168632

After reviewing ABLE's recent submission, there are three primary concerns that compel Local 105 to conclude that ABLE still has not complied with the settlement agreement (which required it to comply with the Union's complete audit request):

- 1) Having already gone through the process of the sample review with Local 105, we assumed that ABLE would understand that Local 105's request for a complete review of payroll information would include an assortment of payroll records, just as the sample review did, compiled for the purpose of accurately representing the company's payroll transactions over the period. This set of payroll records would include an employee list, copies of actual pay stubs, and probably some lists extracted from the payroll system. Also, importantly, the process of a complete review would include discussion with the company about what records are necessary for Local 105 to review. From the documents recently provided by ABLE there is no way of substantiating the quality of the information as it is a company-prepared Excel report instead of source documents from the payroll system.
- 2) Also, from this Excel report, Local 105 has no way of evaluating whether or not this information is complete.
- 3) The information provided, while in an Excel document, was protected in such a way as to prevent Local 105 from being able to search it, sort it, or manipulate it in any way that would facilitate the necessary analysis implicit in the payroll review process.

For these reasons, this late submission is inadequate to meet the obligations of ABLE under the settlement agreement and the NLRA.



EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

ABLE BUILDING MAINTENANCE

and

Case 27-CA-168632

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 105**

**AFFIDAVIT OF SERVICE OF RESPONSE TO RESPONDENT'S OPPOSITION TO
MOTION FOR DEFAULT JUDGMENT**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **January 19, 2017**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

Elizabeth Griffiths, Director of Finance
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January 19, 2017

Date

Monika Kurschen,
Designated Agent of NLRB

Name

/s/ Monika Kurschen

Signature