

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FALCON TRUCKING, LLC and  
RAGLE, INC., A SINGLE EMPLOYER  
and/or JOINT EMPLOYERS

Respondents

and

CHAUFFEURS, TEAMSTERS AND HELPERS  
LOCAL UNION NO. 215 A/W INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

Cases: 25-CA-132518  
25-CA-135316  
25-CA-135335  
25-CA-159531

**RESPONDENTS' REPLY TO GENERAL COUNSEL'S  
BRIEF IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT**

Respondents, Falcon Trucking, LLC ("Falcon") and Ragle, Inc. ("Ragle"), by counsel, file this Reply to the Counsel for The General Counsel's ("CGC") Brief in Support of Motion for Default Judgment.

**I.**

**STATEMENT OF MATERIAL FACTS**

Respondents incorporate herein by this reference the Statement of Material Facts set forth in Respondents' Opposition to General Counsel's Motion to Transfer and For Default Judgment filed with the Board on June 9, 2017.

**II.**

**REPLY ARGUMENT**

**A. Respondents Did Not Violate the Settlement Agreement**

Respondents incorporate herein by this reference the argument set forth under this heading in Respondents' Opposition to General Counsel's Motion to Transfer and For Default

Judgment filed with the Board on June 9, 2017. Respondents would however add the following in reply to CGC's Brief in Support of Motion for Default Judgment filed on June 20, 2017.

In another twist on the interpretation of the terms of the Settlement Agreement, CGC argues that "a review of the Settlement Agreement makes it clear that five truck drivers were being made whole by Respondents because that was the number of employees employed as of the certification date." (MSJ Brief, p. 4) Respondents would agree that the terms of the Settlement Agreement, under the heading entitled "Backpay", required Respondents to pay a monetary amount to five (5) employees to make them whole. (CGC Ex U) In some undefined process of alchemy however, CGC makes a leap from these terms to a demand that in order for Respondents to be in compliance with the Settlement Agreement, Falcon must hire and keep employed 3 or more truck drivers, who are assigned 50% of the time to work for Ragle hauling, and such work is close to 54% of Ragle's trucking needs. (See R Ex 17) The Settlement Agreement simply does not say what CGC opines it says or means.

CGC argues that the language of the Settlement Agreement is "clear and unambiguous" and Respondents' references to the evidence surrounding the negotiation of the Agreement should be ignored by this Board because of the parole evidence rule. (MDJ Brief, pp. 4-5) If this Board does not rule in Respondents' favor and find that Respondents did not violate the Settlement Agreement, at the very least it should find the language of the Agreement is ambiguous and, any ambiguity must be construed against the Region as the drafter of the Agreement. *Murphy Oil USA, Inc.*, 361 N.L.R.B. No. 72, 201 LRRM 1385, 1408 (Oct. 28, 2014); *California Offset Printers, Inc.*, 349 N.L.R.B. 732, 181 LRRM 1425 (April 12, 2007). Further, key analytical principles as outlined by the Board should be followed:

In contract interpretation matters like this, the parties' actual intent underlying the contractual language in question is always paramount, and is given controlling weight. To determine the parties' intent, the Board normally looks to both the contract language itself and relevant extrinsic evidence, such as . . . the bargaining history of the provision itself.

*Mining Specialists*, 314 NLRB 268, 268-269 (1994).

In a footnote, CGC argues that:

Respondents attempt to muddle their affirmative obligation to resume operations by stating that when they agreed to the Settlement Agreement the use of the word 'and' in between the first 'WE WILL resume. . . operations' and the second "WE WILL offer . . . Mabrey . . . reinstatement . . ." meant that they were not required to do anything more than to reinstate Mabrey . . . This interpretation of the provision is simply incredible. Why include this provision at all if Mabrey was already employed and nothing else was required of Respondents?"

(MDJ Brief, p. 5) CGC's question is telling especially since she is the one that drafted the Settlement Agreement. To Respondents, the requirement that Falcon employ Mabrey, connected to Falcon resuming operations and assignment practices as they existed prior to July 8, 2014, made clear that Falcon did not have to employ or offer a job to anyone other than Mabrey. CGC's attempt to undo her drafting of the Settlement Agreement is what is incredible.

**B. Factual Disputes Exists as to Whether Respondents Complied With The Settlement Agreement**

Respondents incorporate herein by this reference the argument set forth under this heading in Respondents' Opposition to General Counsel's Motion to Transfer and For Default Judgment filed with the Board on June 9, 2017. Respondents would however add the following in reply to CGC's Brief in Support of Motion for Default Judgment filed on June 20, 2017.

CGC alleges that no genuine issues of fact exist which warrant a hearing in this matter because “Respondents have not presented any evidence that they have complied or attempted to comply with the affirmative provision in dispute.” (MDJ Brief, p. 6) This is absolutely an incorrect assertion.

Respondents have provided ample evidence to establish that Falcon’s workload and the number of employees it uses to service the workload was wholly dependent on the number and kind of construction projects that were available from year to year that required a need for trucking services and specifically, the number and kind of contracts Ragle entered into from year to year. “Restoring operations at Respondent Falcon Trucking as they existed *prior to* July 8, 2014<sup>1</sup>” poses no steadfast rule or requirement that Respondents have to assign any specific percentage of work to Falcon employees or have more than one employee employed to do the work. If CGC wanted to impose such specific requirements on Respondents, she should have spelled them out in the language of the Notice or perhaps, she should have proposed language that required Respondents to restore operations at Falcon as they existed *on* July 8, 2014 or, as they existed *during the months of January through* July 8, 2014.

CGC argues that a hearing is not required in this matter because “the Board can order that Respondents resume operations at Respondent Falcon *as they existed prior to July 8, 2014.*” (Emphasis Added) How would such an Order read? If it were up to CGC such an order might read in pertinent part as follows:

It is Ordered that Falcon Trucking recognize the Union and immediately hire no less than 3 full-time employees to handle no less than 54% of Ragle’s total trucking needs and, at least 50% of these employees’ work must be comprised of work for Ragle.

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<sup>1</sup> CGC’s Motion, p. 5, ¶ 8.

(See R Ex 17) How long would Falcon have to maintain these mathematical requirements? Forever? For 5 years? Simply put, what CGC is asking for in terms of a remedy is nonsensical especially when you consider the fluctuation in the letting of construction contracts in the construction industry and in the types of construction contracts, i.e., private v. public contracting.

**C. CGC Cannot Litigate the Union's New ULP Charges in This Proceeding**

Respondents incorporate herein by this reference the argument set forth under this heading in Respondents' Opposition to General Counsel's Motion to Transfer and For Default Judgment filed with the Board on June 9, 2017. Respondents would however add the following in reply to CGC's Brief in Support of Motion for Default Judgment filed on June 20, 2017.

CGC is well aware of the rules and procedures outlined in *GC Memorandum 14-48* (April 10, 2014) which is why she has expressly stated that:

“Respondents have not been found to have engaged in conduct that constitutes both a violation of the provisions of the Settlement Agreement and a new unfair labor practice. Instead, counsel for General Counsel asserts that Respondents have breached an affirmative provision of the Settlement Agreement based on the evidence that Respondents have done nothing to comply with the “We Will resume operations. . .” provision. That finding is different from what the Union alleges in the two new charges, i.e., that Respondents contracted out bargaining unit work and withdrew recognition from the Union.

(MDJ Brief, p. 8) However, CGC makes the above statements but then in a footnote espouses her opinion on Falcon's withdraw of recognition from the Union which is the basis for one of the Union's new charges:

The MDJ does not attempt to litigate nor does it have anything to do with the withdrawal of recognition issue or the one-man unit issue. The Board's one-man unit rules do not apply in the face of unresolved unfair labor practices, and specifically in this case, where the unit has not been restored and where, under these specific circumstances, the unit is not a stable unit.

Id.

CGC's circular argument is obvious. She cannot get the relief she seeks with her MDJ unless this Board first finds that Falcon's withdrawal of recognition was unlawful. Also, CGC cannot prove Respondents violated the Settlement Agreement unless she can prove Falcon unlawfully contracted out bargaining unit work *after* the signing of the Agreement meaning Falcon did not restore its operations and make work assignments as it did prior to July 8, 2014.

It is more than obvious that CGC wants this Board to order Respondents to turn back time to the day of July 8, 2014 and have Falcon be exactly as it was on that day in terms of the number of employees working and the kind of work being assigned to these employees. This however is not what CGC negotiated with Respondents and it is not how the language of the Settlement Agreement reads.

### III.

#### CONCLUSION

For all the foregoing reasons, Respondents, by counsel, respectfully request that the Board enter an Order:

- A. Denying CGC's Motion finding that Respondents have not violated the Settlement Agreement; or
- B. In the alternative, deny CGC's Motion finding that Respondents' response herein is sufficient to require a hearing on the question of whether Respondents fully complied with the terms of the Settlement Agreement and if not, what

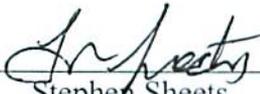
would be the appropriate remedial action; and

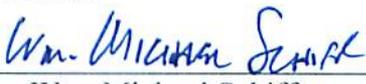
C. For all other relief that is just and appropriate.

Respectfully submitted,

**F. STEPHEN SHEETS & ASSOCIATES**

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**CERTIFICATE OF SERVICE**

The undersigned counsel for one of the Respondents hereby certifies that on June 23, 2017, a true copy of the foregoing pleading and attachments were emailed and mailed by regular first class, United States Mail, postage prepaid, to the following:

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