

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

**EAST END BUS LINES, INC., AND FLOYD BUS
COMPANY, INC., A SINGLE EMPLOYER,**

RESPONDENT

and

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 1205,**

CHARGING PARTY

**Cases 29-CA-188517
29-CA-194097**

RESPONSE TO NOTICE TO SHOW CAUSE AND MEMORANDUM IN SUPPORT

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I. INTRODUCTION

Respondent East End Bus Lines, Inc., ("Respondent East End") and Respondent Floyd Bus Company ("Respondent Floyd") (collectively referred to as "Respondents" or "Company"), pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board ("Board"), hereby submit this Response to the Board's Notice to Show Cause and Memorandum of Law in Support, regarding the General Counsel's Motion to Transfer Case to Board and for Default Judgment ("General Counsel's Motion" or "Motion"). For the reasons stated herein, Respondents respectfully request that the Board deny the General Counsel's Motion.

II. STATEMENT OF THE CASE

The General Counsel's Motion completely overlooks Respondents July 8, 2017 correspondence to Region 29 in which Respondents meticulously laid out numerous steps they undertook to comply with the express terms of the Settlement Agreement. Even more, Respondents position was fully supported by evidence that reinforced that the status quo had been restored and that Respondents rescinded unilateral changes made to the terms and conditions of employment.

At its crux, the General Counsel's Motion alleges that Respondents failed to comply with the Settlement Agreement by not transferring all former Medford work back to the Medford Yard. However, this position is a total misinterpretation of what is required by Respondents under the Settlement Agreement.

In its simplest terms, the Settlement Agreement required Respondents to take various steps to ensure that the Medford work returned back to the Medford Yard. In the event that those steps did not result in the return of all the Medford work to the Medford Yard, the

Settlement Agreement required Respondents to “bargain in good faith with the Union.” It cannot be disputed that Respondents undertook every affirmative obligation outlined in the Settlement Agreement to return the Medford work to the Medford Yard. Furthermore, it cannot be disputed that after undertaking each affirmative obligation outlined in the Settlement Agreement, and all of the Medford work was not returned to the Medford Yard, Respondents bargained (and continue to bargain) in good faith with the Union. In other words, Respondents complied with every requirement outlined in the Settlement Agreement.

First, Respondents held a meeting on March 20, 2017 in which the Company informed Respondent Floyd employees that all former Medford Work will be transferred back to Respondent East End. Then, Respondents began to transfer back mid-day, late run and charter runs to the Medford Yard and made clear that Respondent Floyd employees would only perform the work to the extent that Respondent East End employees were not willing or able to do perform the work. After a limited number of Respondent East End employees agreed to perform the work, Respondents solicited volunteers and accepted transfers to perform the work from Floyd employees. These steps were done pursuant to the express terms of the Settlement Agreement.

After those volunteers and transfers were still not enough to perform the work that was transferred back to the Medford Yard, Respondent Floyd attempted to unilaterally transfer employees to Respondent East End. Because a majority of employees simply refused the transfer, Respondents, pursuant to the Settlement Agreement, then solicited applicants from the Union. After those applicants were not enough to complete the return of the Medford work to the Medford Yard, Respondents, pursuant to the Settlement Agreement, undertook an aggressive effort to hire new drivers. Unfortunately, due to a general driver shortage,

Respondents could not hire enough new drivers. As a result, not all of the Medford was returned to the Medford Yard.

The General's Counsel's Motion fallaciously concluded that because Respondent Floyd employees refused the transfer and because the Company was unable to fill open positions despite its aggressive efforts to recruit and hire new drives, Respondents did not comply with the Settlement Agreement. In other words, the General Counsel alleges that because all of the Medford work was not returned to the Medford Yard, Respondents are in breach of the Settlement Agreement.

The General Counsel completely discounts the fact that in the event Respondents could not fill open positions with volunteers, transfer and new hires, all Respondents were required to do, pursuant to the Settlement Agreement, was "bargain in good faith with the Union." The General Counsel's Motion is entirely devoid of any allegation that Respondents have not bargained in good faith with the Union, including regarding the transfer of routes back to the Medford Yard. Importantly, this is because the irrefutable evidence shows that Respondents have and continue to bargain in good faith with the Union, including regarding the transfer of the Medford work. As such, no argument can be made that Respondents have not complied with the express terms of the Settlement Agreement.

The Board should not permit the Region to engage in "buyer's remorse." This is the Settlement Agreement the Region voluntarily entered into. In the event not all of the Medford work was returned to the Medford Yard all that is required from Respondents is to "bargain in good faith with the Union." Respondents have done just that.

For these reasons, as discussed in detail below, the Board should deny the General Counsel's Motion.

III. STATEMENT OF THE FACTS

A. The Unfair Labor Practice Charges and Settlement Agreement Underlying the Consolidated Complaint

On or around November 21, 2016, the International Brotherhood of Teamsters Local 1205 (“Union” or “Charging Party”) filed an unfair labor practice charge in Case 29-CA-188517 alleging that Respondents engaged in certain unfair labor practices alleging a violation of Sections 8(a)(1), (3), and (5) of the National Labor Relations Act (“Act”). On December 21, 2016, the Charging Party amended the unfair labor practice charge. On or around January 12, 2017, the Charging Party filed a second amended unfair labor practice charge. On or around January 30, 2017, based upon the unfair labor practices charges in Case 29 CA-188517, the Regional Director for Region 29 (“Regional Director”) issued a Complaint and Notice of Hearing alleging that Respondents had engaged in certain unfair labor practices in violation of the Act.

On or around March 2, 2017, the Charging Party filed an unfair labor practice charge in Case 29-CA-194097 alleging that Respondents engaged in certain unfair labor practices alleging a violation of Section 8(a)(5) of the Act. On March 10, 2017, based upon the charges in Case 29-CA-188517 and Case 29-CA-194097, the Regional Director issued an Order Consolidating Complaint, Amendment to the Complaint, alleging that the Respondents engaged in various unfair labor violations in violation of the Act.

On March 16, 2017, Respondents entered into a bilateral informal Settlement Agreement with the Charging Party, which was approved by the Regional Director on the same day. *See* Exhibit A. The “Restore the Status Quo” section of the Settlement Agreement provided:

Respondent will transfer back all bus routes (South Country School District and Longwood School District), charter, mid-day, and late runs that were performed by East End Bus Lines, Inc. ("East End") out of the Respondent's Medford yard ("Medford work"). Respondent agrees to follow the following schedule in effectuating the transfer of this work:

By March 20, 2017, Respondent will inform all current employees of Floyd Bus Company, Inc. ("Floyd") that all former Medford work will be transferred back to East End and will be performed out of the Medford yard. Respondent will solicit volunteers to transfer and perform this work as employees of East End. The employees who volunteer will begin working as employees of East End by March 27, 2017

Beginning March 20, 2017, Respondent will transfer back the prior mid-day, late runs and charter work to the Medford yard. This work will only be performed by Floyd employees to the extent East End employees are not willing or available to perform the work.

By April 10, 2017, Respondent will fill remaining East End positions by transferring Floyd employees to East End in order of reverse seniority. Employees who were employed by First Student Inc., immediately prior to working for Floyd will be exempt from any mandatory transfer. Respondent may then fill any remaining open positions at East End with new hires. In the circumstance that Respondent is unable to fill all open positions at East End with new hires, it shall bargain in good faith with the Union. No employee transferred from Floyd to East End will have their wage rates reduced.

Respondent will provide the Region with updates on the progress of the transferred work on a weekly basis until completed.

East End has submitted bids for the Medford work for South Country School District and Longwood School District for the 2017-2018 school year and is waiting for the results of the bids. Floyd has not bid on that work.

On March 23, 2017, the Regional Director sent Respondents a copy of the approved and executed Settlement Agreement and a cover letter soliciting Respondent's compliance with the executed Settlement Agreement. On May 24, 2017, the Regional Director sent Respondents a letter outlining its affirmative obligations under the Settlement Agreement and made clear to Respondents that Respondents needed to start complying with the affirmative

obligations of the executed Settlement Agreement immediately or be faced with the possibility of the Regional Director issuing a Complaint in Case 29-CA-188517 and Case 29-CA-194097.

On June 8, 2017, Respondents responded to the May 24, 2017 letter from the Regional Director specifically outlining the steps that it had taken to fully comply with the executed Settlement Agreement. *See Exhibit B.* Despite the Respondents June 8, 2017 correspondence, on July 7, 2017, the Regional Director issued a Complaint based on a breach of the affirmative obligations of the Settlement Agreement.

B. Respondent's Compliance with the Settlement Agreement

The Respondents July 8, 2017 correspondence to Region 29 clearly showed that the Company restored the status quo, rescinded unilateral changes to the terms and conditions of employment and continue to bargain in good-faith with the Union, including regarding the transfer of routes back to the Medford Yard.

First, the correspondence evidenced that the Company informed all Respondent Floyd employees that all former Medford work would be transferred back to Respondent East End and performed out of the Medford Yard. In fact, on March 20, 2017, the Company held a meeting at which it informed Respondent Floyd employees that all former Medford work will be transferred back to Respondent East End and will be performed out of the Medford Yard. *See Exhibit C.* At that meeting, the Company solicited volunteers to transfer and perform this work as employees of Respondent East End. *Id.* As a result, on March 27, 2017, four (4) Respondent Floyd employees volunteered to transfer and began work as employees of Respondent East End. As of July 27, 2017, those four (4) Respondent Floyd employees continue to perform work as employees of Respondent East End. Therefore, it cannot be

disputed that the Company complied with this aspect of the Settlement Agreement.

The correspondence also evidenced that the Company transferred back the prior mid-day, late run, and charter work to the Medford yard and that Respondent Floyd employees performed this work only to the extent that they Respondent East End employees were not willing or able to perform the work. As made clear in the correspondence, beginning on March 20, 2017, the Company transferred back mid-day, late run and charter work to the Medford Yard. In or about April 2017, eight (8) Respondent East End employees agreed to take on *extra work assignments* in the form of mid-day, late runs, and charter work at the Medford yard. *See* Exhibit D.¹ In addition Maureen Losacalzo, Sue Collins, Forlando Carlton, and Hary Sherman *voluntarily transferred* from Respondent Floyd's Grucci Yard to the Medford yard to perform the mid-day, late run, and charter runs. *See* Exhibit E. As a result of the above, most of the mid-day, late runs, and charter work was transferred back to Medford. While some work continued to be performed by Floyd employees, this occurred only because East End employees were not willing or able to perform the work, *as per the terms of the Settlement Agreement*. Therefore, it cannot be disputed that the Respondents complied with this aspect of the Settlement Agreement.

The correspondence also evidenced that as contemplated by the Settlement Agreement, the Company attempted to fill all remaining positions at Respondent East End by transferring Respondent Floyd employees to Respondent East End in order of reverse seniority by April 10, 2017. To the extent the Company could not fill all remaining positions, Respondents were required to fill them with new hires. The Company notified over thirty (30) Respondent Floyd employees that their routes were being transferred to the Medford yard and simultaneously

¹ These were for the South Country School District and included, but were not limited to, the BHS/Islip Tech midday run, BAC shuttle run, St. Anthony's late run, BHS/OSS late run, Mercy run, and St. John's late run. Id

sought assurance from those employees that they would accept employment at the Medford yard. Unfortunately, in response, almost all Respondent Floyd employees *refused to accept employment*, even with assurances that there would be no change to their compensation package. *See Exhibit F. Respondents, in compliance with the Settlement Agreement*, openly sought solutions and assistance from the Union through bargaining regarding the refusals of transfer and how the Company can fill the positions. While the Union repeatedly indicated its desire to help increase the number of drivers at the Medford Yard, none of the handful of applicants it referred were qualified to perform the job. The fact that the Charging Party only provided a handful of applicants cannot be understated.

As such, after Respondent Floyd employees *refused* employment at the Medford Yard, the Respondents, as contemplated by the Settlement Agreement, engaged in an aggressive hiring campaign in an attempt to combat the bus driver shortage it was experiencing. Respondents made several efforts to recruit and hire new drivers. It placed two separate job postings on indeed.com and offered new hires a \$1,250 signing bonus. *See Exhibit G.* Respondents also posted a banner advertising open driver positions at a local car wash on Montauk Highway, a high traffic area, and offered a \$1,250 signing bonus. *See Exhibit H.* Finally, Respondents set up an employee referral program whereby employees who refer candidates that the Respondents employ receive a \$1,000 bonus. *See Exhibit I.* While Respondents have successfully recruited thirteen (13) new hires since March 2017 as a result of these efforts, this has not had a positive impact on the net number of routes at Medford due to the number of terminations and/or employees who have gone out on disability since then (seventeen (17), collectively). *See Exhibit J.* Despite that, it cannot be disputed that the Respondents complied with this aspect of the Settlement Agreement.

Finally, the correspondence evidenced that Respondents have (and continue to) bargain in good faith with the Union, including regarding the transfer of Medford work (i.e. routes) back to the Medford Yard as contemplated by the Settlement Agreement. Since the execution of the Settlement Agreement, the parties have met for negotiations and bargained approximately six times, and are scheduled to meet for negotiations and continue to bargain on July 27, 2017. The parties have made substantial progress since negotiations commenced supporting the assertion that Respondents have bargained in good faith with the Union, including with regard to the transfer of Medford work.

IV. ARGUMENT

A. Respondents Have Fully Complied With the Express Terms of the Settlement Agreement

The evidence clearly proves that Respondents have fully complied with the express terms of the Settlement Agreement. Accordingly, there is no basis for a Default Judgment in this case, and the Board must deny the General Counsel's Motion.

The relevant language of the Settlement Agreement is clear, and provides that the Regional Director may issue a Complaint and the General Counsel may move for default judgment only in the case of "non-compliance with any of the terms of this Settlement Agreement by the Respondent[...]." *See* Exhibit A.

Based on the plain language of the Settlement Agreement, the General Counsel's Motion cannot succeed unless there is evidence that the Respondents have failed to comply with a term of the Settlement Agreement. On its face, the General Counsel's Motion fails to meet this standard.

But for Paragraph 15 of the General Counsel's Motion, the Motion is completely

devoid of any specific and/or substantive claims of alleged non-compliance with the Settlement Agreement. Importantly, this includes the Motion lacking any allegation that Respondents have not bargained in good faith with the Union.

Even more, the plain language of Paragraph 15 fails to view the Agreement in its entirety, especially in regards to the affirmative obligations the Respondents did undertake in an effort to return work from the “Floyd Yard back to the Medford Yard,” including subsequent bargaining in good faith with the Union.

Respondents undertook the following affirmative obligations to return work from the “Floyd Yard Back to the Medford Yard:”

- The Respondents held a meeting on March 20, 2017 at which the Company informed Respondent Floyd employees that all former Medford Work will be transferred back to Respondent East End. The meeting was well attended. Respondents solicited volunteers to transfer and perform this work as employees of East End. Only four (4) employees *volunteered* to transfer. *See Exhibit C.*
- Beginning on March 30, 2017, the Company transferred back mid-day, late run and charter runs to the Medford Yard which was to be performed by Respondent Floyd employees only to the extent Respondent East End employees were unwilling or unable to do.
- Between March 22 and March 24, 2017, eight (8) Respondent East End employees took on *extra voluntary work* at the Medford Yard to perform mid-day, late run and charter runs. *See Exhibit D.*
- Between March 22 and March 23, 2017 four (4) Respondent Floyd

employees *voluntary transferred* to the Medford Yard to perform mid-day, late run and charter runs. *See* Exhibit E.

- In April 2017, the Company attempted to fill all remaining Respondent East End positions by transferring Respondent Floyd employees to Respondent East End in reverse seniority. A majority of the Respondent Floyd employees *refused* the transfer. *See* Exhibit F

- Starting on April 2017, after the Charging Party was unable to provide Respondents with enough qualified applicants, the Company sought to fill all open Respondent East End positions with new hires. Respondents made several efforts to recruit and hire new drivers. *See* Exhibits G, H, I. Respondents placed job postings on the internet, advertised on banners, offered signing bonuses, and set up an employee referral program in an attempt to fill the opening positions with new hires. *Id.*

While Respondents acknowledge that twenty-six (26) big bus routes and fourteen (14) van routes have not been returned to the Medford yard, there is no evidence to indicate, as the General Counsel's Motion contends, that this is a violation of (or not in conformity with) the Settlement Agreement.

It cannot be disputed that beginning in March 2017, as required by the Settlement Agreement, Respondents started to return "Floyd Yard back to the Medford Yard." Further, it cannot be disputed, as required by the Settlement Agreement, that Respondent solicited volunteers from Respondent Floyd *and* Respondent East End (in the form of extra assignments) to perform this work.

After not soliciting enough volunteers, and after Respondent Floyd employees refused

the transfer to Respondent East End to perform the Medford Yard work, Respondents, as expressly contemplated in the Settlement Agreement, worked in coalition with the Charging Party to hire additional drivers. The fact that the Settlement Agreement expressly provided for the hiring of new drivers underscores that the parties (and Region) understood that transfers from Floyd by themselves may not effectuate the transfer of all work.

In that same breadth, the Board cannot conclude that Respondents' inability to hire new drivers, which is based solely on a driver shortage, amounts to non-conformity of the Settlement Agreement. An employer can have all the demand and desire in the world to increase its workforce. However, if supply of the employees is not there, demand cannot be met. That is precisely the case here. The General Counsel's Motion takes the illogical position that because Respondent Floyd employees refused the transfer to Respondent East End to perform the Medford Yard work, and because Respondents hiring efforts have not generated the results all parties (including the Region) expected, Respondents are in non-conformance of the Settlement Agreement. This is not the case.

As it pertains to Respondent Floyd employees' refusal to transfer to Respondent East End to perform the Medford Yard work, the Company's hands were tied. It became readily apparent that "forcing" these employees to transfer would not effectuate any transfer of the work to the Medford yard; instead, it would only compound the Company's driver shortage problem both at Medford Yard and with Respondent Floyd because it became clear that Respondent Floyd drivers may sooner leave the Company than accept employment to perform work at the Medford Yard.

That Respondents could not hire enough new drivers does constitute non-conformance of the Settlement Agreement. The express terms of the Settlement Agreement provide only

that Respondent “fill any remaining open positions with new hires...” See Exhibit C. The undisputable evidence proves that Respondents vigorously attempted to do just that.

After undertaking every single affirmative obligation outlined in the Settlement Agreement, Respondents acknowledge that not all of the Floyd work was returned to the Medford Yard. However, under this scenario, all that is required from Respondents is to ‘bargain in good faith with the Union.’ Respondents have done (and continue to do) that here. In fact, since the execution of the Settlement Agreement, the parties have met for negotiations and bargained approximately six (6) times, and are scheduled to meet for negotiations and continue to bargain, including with respect to the transfer of work back to the Medford Yard, on July 27, 2017.

Accordingly, Respondents have complied with the express terms of the Settlement Agreement and there is no basis for a Default Judgment in this case. Therefore, the Board must deny the General Counsel’s Motion.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Board deny the General Counsel’s Motion and allow the case to proceed in compliance proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Peter B. Ajalat hereby certify that the Employer's Response to the General Counsel's Notice to Show Cause and Memorandum in Support of Default Judgment in Cases 29-CA-188517 and 29-CA-194097 has been served this day via electronic filing on the Board's website and via FedEx overnight upon:

Gary Shinnery, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570

and via FedEx overnight upon Region 29:

Kathy Drew King, Regional Director
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/s/ Peter B. Ajalat
Peter B. Ajalat

Dated: July 27, 2017