

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

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

**And**

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

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 1205**

**COUNSEL FOR THE GENERAL COUNSEL’S REPLY TO  
RESPONDENT’S RESPONSE TO NOTICE TO SHOW CAUSE**

In response to Respondent’s breach of the Settlement Agreement (“Agreement”) in the current case, on July 10, 2017, the General Counsel filed its Motion to Transfer Proceedings to the Board and Motion for Default Judgment. On July 13, 2017, the Board issued its Order Transferring Proceedings to the Board and Notice to Show Cause. On July 27, Respondent submitted its Response to Notice to Show Cause and Memorandum in Support (“Response”) in which it falsely asserts that it has complied with the Agreement. While Respondent’s current counsel did not participate in the drafting or signing of the Agreement, Respondent’s obligations under the Agreement nevertheless remain clear. There is no question that Respondent has defaulted. Consequently, the General Counsel’s outstanding Motion for Default Judgment should be granted.

**1) Respondent Unlawfully Moved Work and Employees Out of the Medford Unit.**

As alleged in the Complaint,<sup>1</sup> in response to its employees unionizing, Respondent unlawfully took two significant actions to undermine the bargaining unit at its Medford, New

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<sup>1</sup> See Paragraph 18 of the Complaint Based on Breach of Affirmative Provisions of Settlement Agreement issued on July 7, 2017.

York location: (1) Respondent transferred bargaining unit work (i.e., certain bus routes) out of Medford and reassigned it to non-unit employees at its Brookhaven/Yaphank location; and (2) Respondent transferred certain unit employees out of Medford and reassigned them to Brookhaven/Yaphank. There is no dispute that Respondent took these actions. Consequently, the central purpose of the Agreement was to restore the Medford bargaining unit with regard to both the work and the employees that Respondent had unlawfully moved to Brookhaven/Yaphank. Until the Medford unit is restored, there can be no remedy to Respondent's unfair labor practices.

**2) Respondent Agreed to Move the Work and Employees Back Into the Medford Unit.**

By entering into the Agreement, Respondent explicitly agreed to restore both the work and the employees to the Medford bargaining unit. Respondent's commitment to move the work back to Medford is clearly set forth in the Notice to Employees incorporated in the Agreement: "WE WILL restore the bus routes... that were transferred out of the Medford yard back to the Medford yard."<sup>2</sup> The Agreement establishes that once the bus routes were moved back to Medford, a certain number of unit employees would then transfer back from the Brookhaven/Yaphank location to Medford to perform that unit work. The Medford work would no longer be performed out of the Brookhaven/Yaphank location, inevitably leaving Brookhaven/Yaphank overstaffed. The next step was to determine which employees would be moved to Medford.

Relative to moving the bus routes back to Medford, restoring employees to the Medford unit was more complicated. Specifically, Respondent had not only unlawfully moved work and

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<sup>2</sup> This provision of the Notice to Employees also required Respondent to restore work that included the charter runs, late runs, and mid-day runs back to the Medford yard. The General Counsel's understanding is that Respondent has complied with restoring those aspects of the moved work.

employees to Brookhaven/Yaphank, but had also thoroughly intermingled the former Medford work and employees with the work and employees already at Brookhaven/Yaphank. For example, at the time of the Agreement, there were former Medford employees performing work that had historically been Brookhaven/Yaphank work, just as there were long-time Brookhaven/Yaphank employees now performing the former Medford work. In drafting the Agreement, the parties recognized that some employees would prioritize keeping the specific bus routes that they had performed all year regardless of the location out of which the work was assigned. The parties took this into account in creating a plan to reconstitute the Medford unit.

In an attempt to maintain some continuity, while also balancing the varied interests of the employees (i.e., where they had historically worked, where they preferred to work, and what work they were individually then performing), the parties created a plan to restore employees to the Medford bargaining unit. Under the plan, which is set forth in the “Restore the Status Quo” provision of the Agreement, Respondent agreed to take specific steps in multiple phases to fully assign employees back to the Medford location. The first step in the plan was to solicit volunteers in Brookhaven/Yaphank to transfer to Medford to perform the returned Medford unit work. After taking volunteers, Respondent was to fill the remaining positions at Medford by transferring the necessary number of employees in the order of reverse seniority. Under this carefully-negotiated and considered plan, the Medford unit was to be fully restored by April 10, 2017. Respondent, however, has never implemented the plan.<sup>3</sup>

**3) Respondent Refused to Move the Work and Employees Back Into the Medford Unit In Violation of the Terms of the Agreement.**

Despite Respondent’s clear obligations under the Agreement, Respondent has blatantly refused to take the steps to reconstitute the Medford bargaining unit. Even now, Respondent

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<sup>3</sup> Subsequent to the approval of the Agreement, Respondent changed its counsel in this case.

openly admits in its Response that it still assigns Medford work to employees working in Brookhaven/Yaphank. Unbelievably, in its Response, Respondent's counsel seems oblivious to the fact that this most-fundamental breach of the Agreement is even a problem: "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." (Page 11) This is an absurd statement to make, and reflects the possibility that Respondent's counsel has somehow disregarded Respondent's obligation to restore the Medford bus routes as set forth in the Notice to Employees.<sup>4</sup>

While Respondent openly admits in its Response to not returning the Medford work to Medford, its approach to restoring employees to Medford is equally contrary to its obligations under the Agreement. Rather than transferring employees consistent with the plan set forth in the Agreement, Respondent decided instead to ask employees where they wanted to work. Not surprisingly, some of these employees – employees who had opposed the Union at Medford, as well as employees who had been given raises once they were moved to Brookhaven/Yaphank – communicated objections to returning or transferring to Medford.<sup>5</sup> Respondent now uses those objections to scapegoat the employees for Respondent's failure to reassign them back to Medford. But these employees' opinions have no bearing on Respondent's obligations under the

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<sup>4</sup> "WE WILL restore the bus routes, charter runs, late runs, and mid-day runs that were transferred out of the Medford yard back to the Medford yard."

<sup>5</sup> The Agreement explicitly protects the raises employees had received when Respondents unlawfully moved them from Medford to Brookhaven/Yaphank: "No employee transferred from Floyd [Brookhaven/Yaphank] to East End [Medford] will have their wages reduced."

Agreement.<sup>6</sup> The only reason Medford work and employees are still at Brookhaven/Yaphank is because Respondent has decided to disregard the Agreement.

#### **4) Conclusion**

Respondent has repeatedly violated the Act in the current and prior cases. In a related case currently before the Board, *East End Bus Lines, Inc.*, 29–CA–161247 et al., JD-111-16 (November 21, 2016), Respondent engaged in numerous egregious violations of the Act in trying to defeat the Union’s campaign. Once the Union was certified, Respondent then continued violating the Act as alleged in the current case. Despite agreeing to settle the allegations in the current case, Respondent has since refused to implement the Agreement to which it agreed. As such, the violations have not been remedied, the Medford bargaining unit remains decimated, and the newly-certified Union remains at a substantial disadvantage in trying to negotiate an initial contract in that situation.

Respondent’s repeated unlawful conduct and its breach of the Settlement Agreement makes plain Respondent’s disdain for the Board, the Board’s processes, its obligations under the Act, and the rights of its employees to freely choose their collective bargaining representative. In the current case, Respondent voluntarily entered into and signed an Agreement in which Respondent obligated itself to take clear specific steps to remedy the unfair labor practices it had committed. Despite signing the Agreement, Respondent has since flouted its obligations and simply refused to implement the terms of the Agreement. The General Counsel therefore respectfully requests that the Board grant the Motion for Default Judgment, and issue an Order finding Respondent has violated the Act.

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<sup>6</sup> In its response, Respondent provided forms which had been completed by employees as to their preference regarding transferring to Medford. Many of these forms are dated for April 28 and June 6, 2017. Under the Agreement, Respondent was required to effectuate all transfers by April 10. Clearly, Respondent had no intention of doing so.

Dated: August 3, 2017.



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