



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
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December 11, 2017

Executive Secretary
National Labor Relations Board
1015 Half St SE,
Washington, DC 20003

Re: SBM Site Services, LLC
Case 20-CA-157693

Dear Executive Secretary Gary Shinnars,

Please find the Counsel for General Counsel's Opposition to Respondent's Request for Oral Argument attached here. Please disregard the version that was electronically filed earlier today as it was filed in error.

Very truly yours,

/s/ Min-Kuk Song
Min-Kuk Song
Counsel for General Counsel

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

SBM SITE SERVICES, LLC

and

JOSE LA SERNA, an Individual

Cases 20-CA-157693

and

ESTER QUINTANILLA, an Individual

20-CA-157705

and

ADILIO PRIETO, an Individual

20-CA-157761

and

LUZ DARY DUQUE LOPEZ, an Individual

20-CA-157884

**COUNSEL FOR GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S
REQUEST FOR ORAL ARGUMENT**

Counsel for the General Counsel opposes Respondent’s Request for Oral Argument Regarding Its Exceptions to the Administrative Law Judge’s Decision (the Request).¹ Respondent’s request for oral argument should be denied because this case raises no novel or unusual legal issues that would warrant oral argument before the Board. Furthermore, the hearing record, briefs and motions comprehensively present the facts, legal issues and positions of the parties. The parties have had ample opportunity to make their arguments on brief and have exhaustively done so.

¹ Counsel for the General Counsel will separately file an Answering Brief in response to Respondent’s Exceptions to the Administrative Law Judge’s Decision.

This case does not involve any new or unusual issues that would warrant oral argument. Board law governing discrimination based on union or protected concerted activity is well established, and this case does not involve any novel application or extension of that law. Although Respondent asserts that oral argument is necessary because the administrative law judge's decision "represents a dangerous departure from well-settled Board law" and "misapplies the Board's *Wright Line* standard," Respondent's assertions are unfounded. The administrative law judge's decision is a straightforward application of *Wright Line*, 251 NLRB 1083 (1980). The administrative law judge found that the Charging Parties' union and protected concerted activity was a motivating factor in Respondent's decision to terminate them, and Respondent failed to establish that it would have taken the same action against them in the absence of their protected activity.

Furthermore, the Board has consistently denied requests for oral argument where the record, briefs and motions adequately present the facts, issues and the positions of the parties. See e.g. *Washington Nursing Home, Inc.*, 321 NLRB 366, n. 2 (1996); *Ethan Allen, Inc.*, 231 NLRB 132, n. 4 (1977); *Heck's Inc.*, 180 NLRB 530, n. 4 (1970); *Lever Bros. Co.*, 97 NLRB 1240 n.5 (1952); *Luntz Iro & Steel Co.*, 97 NLRB 909, n. 3 (1951). Respondent fails to identify how the record, briefs and motions in this case are inadequate to convey the facts, issues and positions of the parties so as to justify oral argument. Indeed, Respondent itself states in its Request that its argument supporting oral argument is set forth in its Exceptions brief. The record, briefs and motions here are extensive and encompass all relevant facts, issues, and positions of the parties.

Certainly Respondent has had ample opportunity to make a complete record and fully brief its arguments. Respondent developed its record during 11 days of hearing, which produced

over 1000 pages of transcript and hundreds of exhibits. Respondent also had sufficient time and opportunity to fully address its legal arguments in its post-hearing brief and its Exceptions brief. Of note, Respondent's post-hearing brief consisted of 157 pages and was filed after two extensions of time.² For its Exceptions brief, which Respondent now also seeks to argue orally to the Board, Respondent obtained both an extension of time and permission to exceed the 50-page limit. Respondent was allowed 75 pages for its Exceptions brief, fifty percent more than the usual 50. Notably, Respondent exhausted its case at 62 pages, despite having 13 more pages available for argument. What Respondent requests to argue orally has undoubtedly already been covered in briefing.³

For the reasons set forth above, Counsel for the General Counsel respectfully requests that Respondent's Request for Oral Argument be denied.

Dated: December 11, 2017



Min-Kuk Song
Carmen León
Counsel for the General Counsel

² Respondent was granted extensions of time to file all of its briefs. First, the administrative law judge granted counsels' joint request for a 28-day extension of time to file post-hearing briefs. Then, Respondent on its own requested and was granted an additional seven days, so that post-hearing briefs that were initially due March 10, 2017 were ultimately due April 14, 2017, a full 10 weeks after the close of the hearing. Finally, Respondent requested and was granted a 30-day extension of time to file its Exceptions and Exceptions brief with the Board.

³ Either Respondent is requesting to argue orally something already addressed in its Exceptions Brief or something Respondent found unnecessary to include in its Exceptions Brief. Thus, Respondent's oral arguments are either redundant or unnecessary and do not merit the Board's time or resources.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

SBM SITE SERVICES, LLC

and

**JOSE LA SERNA, ESTER QUINTANILLA,
ADILIO H. PRIETO AND LUZ DARY DUQUE
LOPEZ, an Individual**

**Case 20-CA-157693; 20-CA-
157705; 20-CA-157761; 20-
CA-157884**

**AFFIDAVIT OF SERVICE OF: COUNSEL FOR GENERAL COUNSEL'S
OPPOSITION TO RESPONDENT'S REQUEST FOR ORAL ARGUMENT**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on December 11, 2017, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

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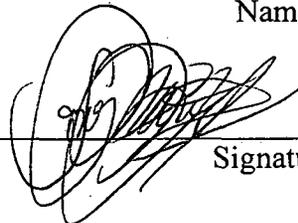
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December 11, 2017

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Signature