

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**OS TRANSPORT LLC AND  
HCA MANAGEMENT, INC.  
A SINGLE EMPLOYER**

**and**

**Cases 32-CA-025100  
32-CA-025399  
32-CA-025490**

**TEAMSTERS LOCAL NO. 350,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

**MOTION TO STRIKE AND MOTION IN LIMINE TO  
PRECLUDE CERTAIN EVIDENCE & INQUIRY**

Pursuant to Section 102.25 and 102.59 of the National Labor Relations Board's Rules and Regulations, the General Counsel hereby moves to strike and preclude Respondent from introducing evidence on those portions of Respondent's Answer, as set forth in the introductory paragraph and numbered paragraphs 1(A), 1(B), 1(C), 5, and 6(A), that assert that the discriminatees in this matter are not entitled to backpay because of their alleged unauthorized work status or immigration status.

On February 5, 2018, the General Counsel filed a Motion for a Bill of Particulars requesting an order requiring Respondent to serve on the General Counsel, within 14 days of the date of the order, a bill of particulars which will include: the identity of each discriminatee asserted to be unauthorized to work in the United States; and, (2) for each such discriminatee, a particularized and specific description of all evidence, both documentary and testimonial, that Respondent will rely upon to establish the ineligibility.

On February 6, 2018, Associate Chief Administrative Law Judge Gerald M. Etchingham issued an Order to Show Cause instructing Respondent to file and serve a response to the General Counsel's Motion for a Bill of Particulars by 12 p.m. (noon) on Friday, February 9, 2018.

Respondent did not file a response to the General Counsel's Motion as required by the Order to Show Cause. Instead, on Friday, February 9, 2018, Respondent's Counsel advised the General Counsel in an e-mail that Respondent did not oppose the Motion for a Bill of Particulars and would submit the information requested in the Bill of Particulars within 14 days of the General Counsel's Motion, which would have been February 20, 2018. A copy of Respondent's Counsel's February 9, 2018 e-mail is attached hereto as Exhibit A. However, to date, Respondent's Counsel has not provided any information requested in the Bill of Particulars.

As set forth in detail in the General Counsel's Motion for a Bill of Particulars, the Board has held that because questions about immigration status are such an "intrusive inquiry," and because of the extreme chilling effect that such an inquiry may have, that employers may not plead this affirmative defense in compliance without a factual basis for doing so. *Flaum Appetizing Corp.*, 357 NLRB 2006, 2012 (2011).

Here, Respondent's affirmative defense that the discriminatees are not entitled to a backpay remedy because they were not eligible to work in the United States fails to meet the basic pleading requirements of Section 102.56 and *Flaum Appetizing*. Despite being given the opportunity to perfect its Answer and its agreement to provide supporting evidence and information, Respondent's Answer remains defective. Since Respondent has failed to provide any factual basis for its assertions and failed to point to any specific documents or evidence upon which it relied upon to determine the work authorization or immigration status of the

discriminatees, General Counsel hereby moves that those portions of Respondent's Answer that raise such issues be stricken and that Respondent be prohibited from raising these issues in the hearing set for this matter on March 6, 2018.

Respectfully submitted this 28<sup>th</sup> day of February, 2018.

/s/ Amy Berbower

Amy Berbower  
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Region 32  
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**Dated: February 28, 2018**

**AFFIDAVIT OF SERVICE OF MOTION TO STRIKE AND MOTION IN LIMINE TO  
PRECLUDE CERTAIN EVIDENCE & INQUIRY**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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National Labor Relations Board  
Division of Judges  
901 Market Street, Suite 300  
San Francisco, CA 94103  
**E-FILE**

February 28, 2018

Date

Ida Lam, Designated Agent of NLRB

Name

/s/ Ida Lam

Signature