

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE**

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

**ORDER GRANTING MOTION TO STRIKE AND MOTION IN LIMINE**

The General Counsel moves for a pre-trial order striking Respondent’s affirmative allegations or defenses in Respondent’s answer that relate to the immigration status of the alleged discriminatees. Specifically, the General Counsel moves to strike and preclude Respondent from introducing evidence set forth in its introductory paragraph and paragraphs 1(A), 1(B), 1(C), 5 and 6(A) of its answer, which asserts that the discriminatees in this compliance proceeding are not entitled to back pay because of their alleged unauthorized work status or immigration status. On February 28, 2018, I issued an order to show cause with a response due by noon on March 1, 2018. Respondent did not file a response.

Previously, the General Counsel, on February 5, 2018, filed a motion for a bill of particulars requesting an order requiring Respondent to provide specific evidence of such an affirmative defense. On February 6, 2018, Associate Chief Administrative Law Judge Gerald M. Etchingham issued an order to show cause. Respondent did not file a response. The General Counsel asserts that instead Respondent stated that it would submit the requested information within 14 days of the General Counsel’s motion for a bill of particulars. According to the General Counsel Respondent has not provided the information requested.

I grant the General Counsel’s motion to strike and motion in limine as Respondent did not respond to the February 28, 2018 order to show cause. In addition, in *Flaum Appetizing Corp.*, 357 NLRB 2006, 2011 (2011), in a matter similar to the one presented here, the Board stated, “If we were, contrary to the foregoing precedent, to permit the pleading of an affirmative defense based on immigration status in the complete absence of any articulable reason for the Respondent to believe the discriminatees were not authorized to work, we would contravene the policies underlying *both* [the Immigration Reform and Control Act of 1986 (IRCA)] and the [National Labor Relations Act (the Act)].” Moreover, the Board stated that permitting reverification and intrusive inquiry into a discriminatees’ immigration status in every case in which reinstatement or back pay is granted without sufficient factual basis for so doing “would invite a form of abuse specifically prohibited by the IRCA, and would contravene ordinary rules

of procedure and undermine the policies of our Act.” Id. Thus, under current Board precedent, I grant the General Counsel’s motion to strike and motion in limine and strike the portions of Respondent’s answer that raise such issues and preclude Respondent from raising these issues at the hearing set commence on March 6, 2018.

SO ORDERED.

Date: March 1, 2018, San Francisco, California.



Amita B. Tracy  
Administrative Law Judge

***Served by email and facsimile upon the following:***

***For the NLRB:***

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**Electronic Service Reports below:**

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Counsel please see the attached Order from Administrative Law Judge, Amita B. Tracy. Regards, Vanise Lee, Legal Tech. NLRB Judges San Francisco, CA

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