

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

LOCAL 307, NATIONAL POSTAL  
MAILHANDLERS UNION (NPMHU),  
A DIVISION OF LIUNA (UNITED STATES  
POSTAL SERVICE),

Case 07-CB-218938

Respondent,

and

XENTHRUS A. MAINOR, an Individual,

Charging Party.

\_\_\_\_\_ /

**UNION’S RESPONSE TO SHOW CAUSE NOTICE, OPPOSITION TO  
DEFAULT JUDGMENT MOTION, AND REQUEST TO FILE ANSWER**

The Union opposes the motions to transfer the case and for default judgment (“default judgment motion”) because the Union was not effectively served with the complaint and notice of hearing, and -- in any event -- the Union has already processed the grievance settlements, as requested by the General Counsel (“GC”).

**I. A DEFAULT JUDGMENT IS NOT PROPER BECAUSE THE UNION HAS  
PROCESSED THE GRIEVANCE SETTLEMENTS**

The complaint’s allegation is that the Union “unreasonably delayed the processing” of 41 “class action grievance settlements.” (Default Ex. E at 2, ¶10). But, the Union has already processed the grievance settlements -- the remedy the GC seeks. (*Id.* at 3). The Union provided the Postal Service with the employee names and amounts to be processed. Now, the Postal Service is making those payments. Further, the delay in

processing the 41 class action settlements, affecting over 150 individuals, was not unreasonable nor the Union's fault.

Under these circumstances, a default judgment is inappropriate.

## **II. A DEFAULT JUDGMENT IS NOT PROPER BECAUSE THE UNION WAS NOT SERVED WITH THE COMPLAINT**

The complaint's "affidavit of service" states that the November 21 complaint and notice of hearing was served November 21 on the Union by "**CERTIFIED MAIL, RETURN RECEIPT REQUESTED.**" (Default Ex. F; emphasis in original).

This is not so. The GC's motion does *not* attach any return receipt. The GC did *not* provide any signed certified mail return receipt card demonstrating that the complaint was received by the Union and did *not* provide the signature of any person. Instead, the GC offers a November 27, 2018 document called "USPS Tracking." (Default Ex. G). This document appears to be from a web site. This document is **(1)** not signed, **(2)** does not indicate the "item" served, **(3)** does not list the street address served, **(4)** does not identify the suite number served, **(5)** does not identify the person to whom the unidentified "item" was delivered, and **(6)** does not in any way identify the union or the complaint.

Moreover, the Union did *not*, in fact, receive the complaint on November 27. That is likely because the item, if delivered, was not delivered to this Union or its correct suite. The Union's address is 2441 West Grand Boulevard, Suite 201, Detroit, Michigan, 48208. But the 2441 West Grand Boulevard address is shared by other unions and businesses -- each at separate suite numbers -- including **(1)** UAW, **(2)** CWA, **(3)** Pam's

Place Counseling Center, and **(4)** League of Catholic Women Seniors. If the “item” was delivered to someone at 2441 West Grand Boulevard, it was not given to anyone affiliated with the Union here and the Union never received it.

To compound the problems, the GC did not e-mail or e-serve the complaint to the Union. This is so even though prior and subsequent communications between the Region and Union were by e-mail -- including the GC’s default judgment motion. And, service by e-mail is permitted under the NLRB Rules. Reg. 102.4(a), (c), and (f)-(g).

The GC says the acting regional director sent a December 11 follow-up letter, after the December 5 deadline had passed. (Default Ex. H). This letter, however, did not include the complaint and notice of hearing. A few days later, the GC e-filed its motion. The motion included the complaint and notice of hearing as Exhibits E and F. This is the first time that the Union received the complaint and notice of hearing. The Union tried to file an extension request, but was unable to do so because the deadline had passed. The Union, which had not been represented by counsel in this matter, then retained counsel to respond to the show cause.

In short, good cause is shown that default judgment should be denied because the GC did not perfect complaint service, and the Union did not receive the complaint until after the answer deadline passed. Here, default judgment would deny the Union due process.

## CONCLUSION

For these reasons, we ask the Board to remand this matter to the Region and permit the Union to answer the complaint.

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January 17, 2019

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**AFFIDAVIT OF SERVICE**

I certify that on January 17, 2019, I caused the foregoing paper to be e-filed via the NLRB's e-filing system to the following:

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I further certify that on January 17, 2019, I caused the foregoing paper to be sent by UPS overnight mail to the following:

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