

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

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

Respondent

Case 07-CB-218938

and

XENTHRUS A. MAINOR, an Individual

Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY
TO RESPONDENT'S RESPONSE TO SHOW CAUSE NOTICE, OPPOSITION TO
DEFAULT JUDGMENT MOTION, AND REQUEST TO FILE ANSWER**

Pursuant to the Board's January 7, 2019 Notice to Show Cause¹ and Section 102.24 of the Board's Rules and Regulations, Series 8, as amended ("the Board's Rules"), Counsel for the General Counsel Renée D. McKinney files this Reply to Respondent's Response to Show Cause Notice, Opposition to Default Judgment Motion, and Request to File Answer, and in support thereof, states as follows:

Respondent's Response to the Board's Notice to Show Cause ("the Response") makes three main arguments: (1) opposing the Regional Director's merit determination that Respondent unreasonably delayed processing the grievance settlements at issue in the Complaint; (2)

¹ Region Seven received Respondent's Response to the Board's Notice to Show Cause on January 17, 2019 by e-mail service and therefore this Reply is timely-filed.

claiming that Respondent has satisfied, in part, the remedial requirements specified in the Complaint; and (3) contending that the Region's service of the Complaint was deficient. None of these arguments has merit.

Section 102.4(a) of the Board's Rules and Regulations sets forth the requirements for proper service of Complaints:

Complaints and compliance specifications (including accompanying notices of hearing, and amendments to either complaints or to compliance specifications), final orders of the Board in unfair labor practice cases and Administrative Law Judges' decisions must be served upon all parties personally, by registered or certified mail, by leaving a copy at the principal office or place of business of the person required to be served, by email as appropriate, or by any other method of service authorized by law.

Here, the Region provided the Complaint's Affidavit of Service as Exhibit F to the December 21, 2018 Motions to Transfer Case to and Continue Proceedings before the Board and for Default Judgment ("Motions"). The Affidavit of Service stated that the Complaint was served by certified mail, return receipt requested. The address reflected on the Affidavit of Service is the same as the address specified by Respondent in its Response: 2441 West Grand Boulevard, Suite 201, Detroit, MI 48208. The Region further provided documentary evidence in its Motions, as Exhibit G, from the United States Postal Service that the item with the tracking number associated with the Complaint, pursuant to the Affidavit of Service, was delivered "to an individual at the address at 12:52 pm on November 27, 2018 in DETROIT, MI 48208."

Yet, Respondent argues that the United States Postal Service's online tracking service's verification that the certified mail piece with the tracking number associated with the Complaint was delivered is insufficient to establish service by certified mail because, among other irrelevant alleged infirmities, Respondent did not actually receive the Complaint. Respondent is gravely mistaken: the Board's Rules do not require actual receipt of the Complaint to perfect service.

It is well-settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 n.5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 n.2 (2003). Service of the Complaint by certified mail is perfected here because the affidavit of service constitutes proof of service—notwithstanding the absence of signed postal return receipt cards. *CCY New Worktech, Inc.*, 329 NLRB 194, 194 (1999). Contrary to Respondent's contention, it is not necessary to establish that Respondent actually received the Complaint to support a default decision. *Id.*

Nor is it relevant that the Region's default warning notice (Motions, Exhibit H), did not include a copy of the Complaint. No Board Rule requires that any such warning be given—much less that the warning letter enclose a copy of the Complaint. As the facts and well-settled Board law establish, the Region satisfied its service obligations pursuant to the Board's Rules by certified mail service of the Complaint to Respondent on November 21, 2018.

Turning to Respondent's remaining arguments alleging that a default judgment is improper because Respondent did not unreasonably delay processing the grievance settlements at issue in the Complaint and has satisfied, in part, the remedial requirements specified in the Complaint, neither of these arguments warrant serious consideration where the substance of Respondent's pre- and post-Complaint actions related to the merits are not at issue. What is at issue in this matter before the Board is strictly procedural.

Namely, that on November 21, 2018, the Regional Director for the Seventh Region issued and served upon Respondent by certified mail a Complaint and Notice of Hearing. In the Complaint, Respondent was notified that it must file an answer to the Complaint on or before December 5, 2018. Yet, Respondent failed to file an answer on or before December 5, 2018 as

required by the Complaint. Further, Respondent has not shown good cause for its continued failure to file an answer pursuant to Section 102.20 of the Board's Rules.

WHEREFORE, Counsel for the General Counsel again respectfully requests:

1. That the Board deem all allegations of the Complaint to be admitted to be true, and so found by the Board, and that Respondent be found by the Board to have violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended, without taking evidence in support of the Complaint.

2. That the Board issue a Decision containing findings of fact, conclusions of law, and an Order, all consistent with the allegations in the Complaint against Respondent and the prayer for relief set forth therein.

Respectfully submitted this 24th day of January 2019,

/s/ Renée D. McKinney

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CERTIFICATE OF SERVICE

I certify that I have caused a true and correct copy of the foregoing **COUNSEL FOR THE GENERAL COUNSEL'S REPLY TO RESPONDENT'S RESPONSE TO SHOW CAUSE NOTICE, OPPOSITION TO DEFAULT JUDGMENT MOTION, AND REQUEST TO FILE ANSWER** to be served upon the following via the NLRB's e-filing system on January 24, 2019:

Roxanne L. Rothschild, Acting Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

I further certify that I have caused a true and correct copy of the above-referenced documents to be served on the following by e-mail or U.S. Mail on January 24, 2019:

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Respectfully Submitted,

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