

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

G4S SECURE SOLUTIONS (USA) INC.

and

Case 19-CA-221172

**WASTE TREATMENT SECURITY GUARDS
UNION 161**

JOINT MOTION AND STIPULATION OF FACTS

The parties to this case, G4S Secure Solutions (USA) Inc. ("Respondent" or "G4S"), Waste Treatment Security Guards Union 161 ("Union" or "Charging Party"), and Counsel for the General Counsel ("General Counsel"), jointly move to waive a hearing with respect to the allegations in this matter and to authorize the Administrative Law Judge to issue a decision pursuant to § 102.35(a)(9) of the Rules and Regulations of the Board. The waiver of the hearing will effectuate the purposes of the National Labor Relations Act ("Act") and avoid unnecessary costs and delay.

This Motion is not intended in any way to waive the parties' right to file with the Administrative Law Judge briefs in support of their positions, to file with the Board any exceptions to the Administrative Law Judge's decision, or to obtain judicial review of any Decision and Order the Board issues in this case based on this stipulated record.

If this Motion is granted, the parties agree to the following:

1. The record in this case consists of the Charge in Case 19-CA-221172, the Complaint and Notice of Hearing, the Answer to the Complaint, the Stipulation

of Facts provided below, and Exhibits attached thereto, the Statement of Issue Presented, and each party's Statement of Position.

2. This case is submitted directly to the Administrative Law Judge for the issuance of Findings of Fact, Conclusions of Law, and a Recommended Order.
3. The parties waive a hearing before an Administrative Law Judge.
4. The parties will not issue and will withdraw all subpoenas for witness testimony or for the production of documents any of them have served in connection with the hearing that was scheduled to occur before the Administrative Law Judge beginning on January 29, 2019.
5. The Administrative Law Judge will set a time for the filing of briefs, which the parties request be 35 days from the granting of this Motion.

The parties agree to the following Stipulation of Facts. This Stipulation is made without prejudice to any objection that any party may have as to the relevance of any facts stated herein.

STIPULATION OF FACTS

1. The Charge in Case 19-CA-221172, attached as **Exhibit A**, was filed by the Union on May 29, 2018, and served on Respondent by U.S. mail on or about May 31, 2018.
2. On October 29, 2018, the Regional Director of Region 19 of the Board ("Regional Director") issued a Complaint and Notice of Hearing ("Complaint") in Case 19-CA-221172, which is attached as **Exhibit B**.

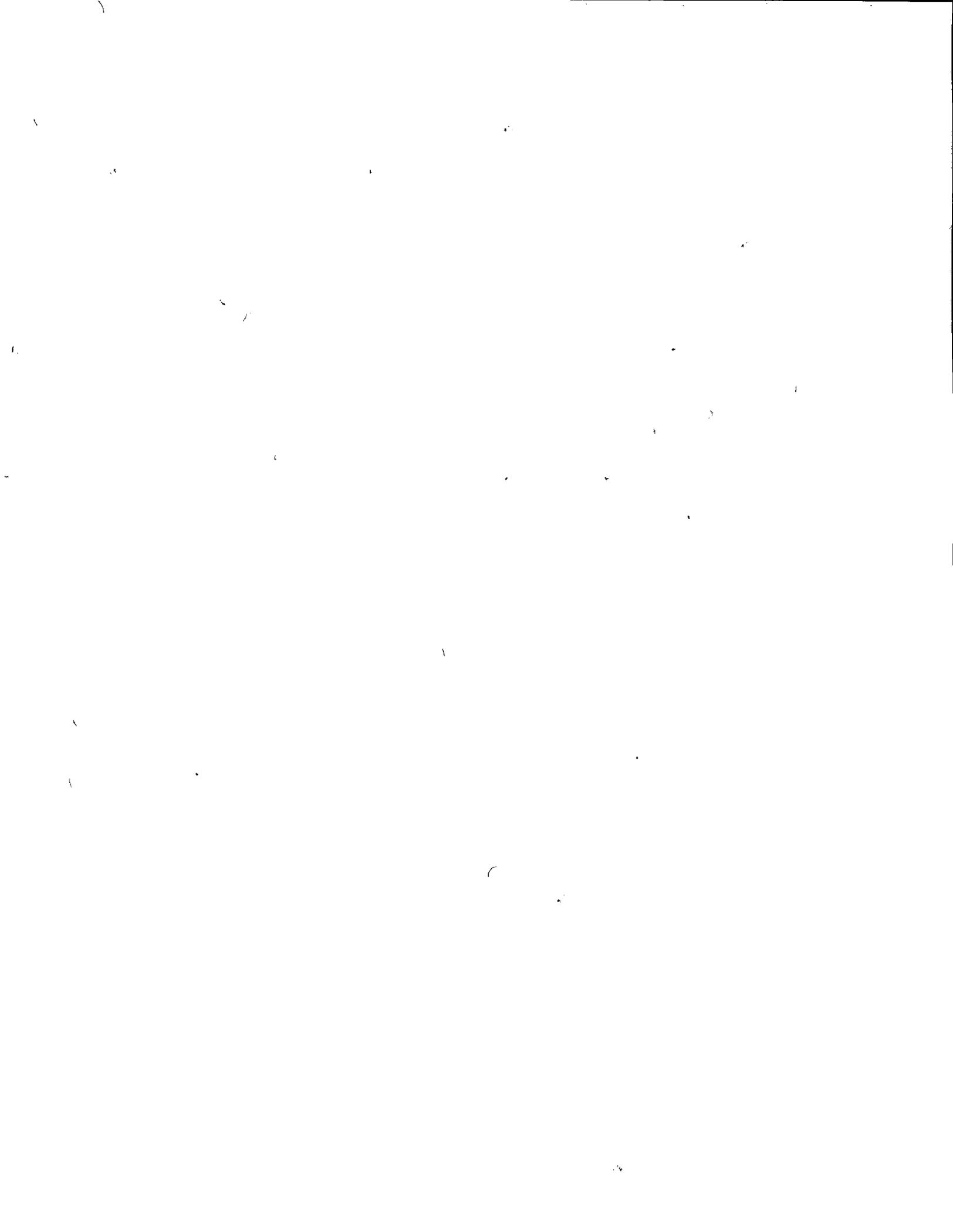
3. On about November 12, 2018, Respondent filed a timely Answer to the Complaint, attached as **Exhibit C**, denying that it had violated the National Labor Relations Act ("Act") as alleged.
4. At all material times, Respondent has been a State of Florida corporation with a place of business in Richland, Washington, engaged in the business of providing security services, including at the Waste Treatment Plant ("WTP") in Richland, Washington.
5. On or about November 13, 2017, Respondent succeeded Securitas Security Services USA, Inc. as the contract provider of security services to Bechtel National, Inc. ("Bechtel"), at WTP and at various other nearby related sites. Prior to that time, Securitas Security Services USA, Inc. was the contract provider of security services at the WTP. Since on or about November 13, 2017, Respondent has employed as a majority of its employees individuals who were previously employees of Securitas Security Services USA, Inc.
6. Based on its operations described above in paragraph 5, Respondent has continued as the employing entity and is a successor to Securitas Security Services USA, Inc.
7. In conducting its business described above in paragraphs 4-6, and the rest of its operations and business throughout the United States, during this calendar year, a representative period, Respondent received gross revenues in excess of \$500,000.
8. In conducting its business described above in paragraphs 4-6 and the rest of its operations and business throughout the United States, during this calendar

year, a representative period, Respondent provided services directly to customers located outside the State of Washington valued in excess of \$50,000.

9. At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.
10. At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.
11. At all material times, Christopher Philips has held the position of General Manager and has been a supervisor of Respondent within the meaning of § 2(11) of the Act and/or an agent of Respondent within the meaning of § 2(13) of the Act, acting on its behalf.
12. The following employees of Respondent (the "Unit") constitute a unit appropriate for the purpose of collective bargaining within the meaning of § 9(b) of the Act:

All full time and regular part-time security guards, including leads, employed by Respondent at the Waste Treatment Plant in Richland, Washington; excluding all other employees, office clerical employees, confidential employees, and supervisors as defined in the Act.

13. On October 14, 2016, the Board certified the International Guards Union of America, Region 1 as the exclusive collective-bargaining representative of the Unit. The Board amended that certification on December 21, 2017, to reflect that the Union was the certified exclusive collective-bargaining representation of the Unit.



14. At all material times since about December 21, 2017, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.
15. On about May 17 and 18, 2018, via emails to Respondent, attached as **Exhibit D at pages 2 and 1**, respectively, the Union made and/or reiterated its request for a copy of Respondent's contract with Bechtel made orally that day.
16. On about May 20 and 24, 2018, via emails and attachments to Respondent attached as **Exhibit E at pages 1-2 and 3-4, Exhibit G1 and Exhibit H**, the Union attempted to explain its outstanding requests for a copy of Respondent's contract with Bechtel.
17. By email dated May 20, 2018, attached as **Exhibit F at pages 1-2**, the Union requested all communications between Bechtel and Respondent related to Respondent's employees, including but not limited to:
- (a) Emails and documents exchanged from the contract award date to current date;
 - (b) Requested post transfers;
 - (c) Discipline;
 - (d) Negative reviews of employees; and
 - (e) Lists of employees that are "good" and "bad."
18. On about May 20 and 22, 2018, via emails, attached as **Exhibit E at pages 2 and 4**, the Union requested all information concerning the cost of running the WTP contract, including but not limited to wages, benefits, overhead, and other related factors.

19. On various dates since about May 18, 2018, including but not limited to May 18, 21, and 24, 2018, Respondent, by Christopher Phillips ("Phillips") via emails, attached as **Exhibit D at page 1, Exhibit E pages 1 and 3, and Exhibit F at page 1**, has failed and/or refused to furnish the Union with the information requested by it, as described above in paragraphs 15 through 18.

20. On about December 20, 2017, Securitas Security Services USA, Inc. had entered into a Settlement Agreement resolving an unfair labor practice charge involving the Unit. A copy of that Settlement Agreement is attached as **Exhibit G**.

21. The Regional Director, having submitted an issue regarding Securitas Security Services USA, Inc. to the Division of Advice, received a Memorandum from the Division of Advice dated September 5, 2017, which is attached as **Exhibit H**.

ISSUE PRESENTED

Whether Respondent's failure and refusal to provide the information that the Union requested violates §§ 8(a)(1) and (5) of the Act.

POSITION OF THE PARTIES

A. General Counsel's Position

Respondent violated the Act by not providing the Union with the requested information relating to Respondent's relationship as a possible joint employer with Bechtel. This was presumptively relevant, as Respondent's predecessor was an acknowledged joint employer with Bechtel. Moreover, the requested information is critical to the Union's performance of its duty as the exclusive collective bargaining representative of the Unit because the parties are in negotiations for an initial contract.

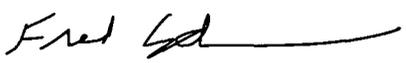
B. Charging Party's Position

The Charging Party concurs with General Counsel's position.

C. Respondent's Position

Under the Act, an employer generally is not required to provide a union with a copy of the employer' contract with its customer or communications between the employer and customer, in response to a union's request for information. Neither the Union (nor General Counsel in the Complaint) has identified any exception to this general rule that applies in this case. As such, Respondent denies that its refusal to provide the requested information is unlawful under the Act.

Respectfully submitted this 28th day of January, 2019.

<p>S. COTTRELL Digitally signed by S. COTTRELL Date: 2019.01.28 14:54:22 -08'00'</p>	
<p>Counsel for the General Counsel National Labor Relations Board Region 19 915 Second Ave., Ste. 2948 Seattle, WA 98174 Tel: (206) 220-6338 Fax: (206) 220-6305 Email:s.nia.cottrell@nlrb.gov</p>	<p>Fred Seleman, Vice President Labor and Employment Law G4S Secure Solutions (USA) Inc. 1395 University Blvd. Jupiter, FL 33458 Tel: (561) 691-6582 Fax: (561)691-6680 Email: fseleman@usa.g4s.com</p>
<p>Waste Treatment Security Guards Union 161 1305 Knight St. Richland, WA 99352</p>	

B. Charging Party's Position

The Charging Party concurs with General Counsel's position.

C. Respondent's Position

Under the Act, an employer generally is not required to provide a union with a copy of the employer' contract with its customer or communications between the employer and customer, in response to a union's request for information. Neither the Union (nor General Counsel in the Complaint) has identified any exception to this general rule that applies in this case. As such, Respondent denies that its refusal to provide the requested information is unlawful under the Act.

Respectfully submitted this 28th day of January, 2019.

<p>S. COTTRELL Digitally signed by S. COTTRELL Date: 2019.01.28 14:54:22 -08'00'</p>	
<p>Counsel for the General Counsel National Labor Relations Board Region 19 915 Second Ave., Ste. 2948 Seattle, WA 98174 Tel: (206) 220-6338 Fax: (206) 220-6305 Email: s.nia.cottrell@nlrb.gov</p>	<p>Fred Seleman, Vice President Labor and Employment Law G4S Secure Solutions (USA) Inc. 1395 University Blvd. Jupiter, FL 33458 Tel: (561) 691-6582 Fax: (561)691-6680 Email: fseleman@usa.g4s.com</p>
<p> Waste Treatment Security Guards Union 161 1305 Knight St. Richland, WA 99352</p>	

INTERNET
FORM NLRB-801
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
19-CA-221172	5-29-2018

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer G4S Secure Solutions, INC	b. Tel. No. 253-872-1555
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 16300 Christensen Rd #130, Tukwila, WA 98188	e. Employer Representative Christopher W. Phillips
	g. e-Mail
	h. Number of workers employed 25
i. Type of Establishment (factory, mine, wholesaler, etc.) Security Service Provider	j. Identify principal product or service Security
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (a)(5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the past six months the aboved named employer has unlawfully failed to provide information requested by the Union in order to represent bargaining unit employees.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Waste Treatment Plant Security Guards Union local 161	
4a. Address (Street and number, city, state, and ZIP code) 1305 Knight St, Richland, WA 99352	4b. Tel. No.
	4c. Cell No.
	4d. Fax No.
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Guards Union of America	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>[Signature]</u> President	Tel. No. 602-828-8511
(signature of representative or person making charge)	Office, if any, Cell No.
(Print/type name and title or office, if any)	Fax No.
Address <u>1305 Knight St, Richland WA 99352</u> <u>5/29/2018</u> (date)	e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 e the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Joint Exhibit: A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

G4S SECURE SOLUTIONS (USA), INC.

and

Case 19-CA-221172

**WASTE TREATMENT PLANT
SECURITY GUARDS UNION 161**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Waste Treatment Plant Security Guards Union 161 ("Union"). It is issued pursuant to § 10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*, and § 102.15 of the Rules and Regulations of the National Labor Relations Board (the "Board"), and alleges that G4S Secure Solutions (USA), Inc. ("Respondent"), herein referred to by its correct legal name, has violated the Act as described below.

1.

The charge in this proceeding was filed by the Union on May 29, 2018, and a copy was served on Respondent by U.S. mail on about May 31, 2018.

2.

(a) Respondent, a State of Florida corporation with an office and place of business in Richland, Washington, is engaged in the business of providing security services, including at the Waste Treatment Plant ("WTP") in Richland, Washington.

(b) In or about December 2017, on a date better known to Respondent, Respondent succeeded Securitas Security Services USA, Inc. (the "Predecessor")

Employer”), as the contract provider of security services to Bechtel National, Inc. (“Bechtel”), at WTP and at various other nearby related sites, and since then has continued to operate the business and/or provide the services of the Predecessor Employer in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of the Predecessor Employer.

(c) Based on its operations described above in paragraph 2(b), Respondent has continued as the employing entity and is a successor to Securitas Security Services USA, Inc.

(d) In conducting its business described above in paragraphs 2(a)-(c) during this calendar year, a representative period, Respondent received gross revenues in excess of \$500,000.

(e) In conducting its business described above in paragraphs 2(a)-(c) during this calendar year, a representative period, Respondent provided services directly to customers located outside the State of Washington valued in excess of \$50,000.

(f) At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 2(2), (6) and (7) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times, Christopher Philips has held the position of General Manager and has been a supervisor of Respondent within the meaning of § 2(11) of the

Act and/or an agent of Respondent within the meaning of § 2(13) of the Act, acting on its behalf.

5.

(a) The following employees of Respondent (the "Unit") constitute a unit appropriate for the purpose of collective bargaining within the meaning of § 9 (b) of the Act:

All full time and regular part-time security guards, including leads, employed by Respondent at the Waste Treatment Plant in Richland, Washington; excluding all other employees, office clerical employees, confidential employees, and supervisors as defined in the Act.

(b) On October 14, 2016, the Board certified the International Guards Union of America, Region 1 as the exclusive collective-bargaining representative of the Unit. The Board amended that certification on December 21, 2017, to reflect that the Union was the certified exclusive collective-bargaining representation of the Unit.

(c) At all material times since about December 21, 2017, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

(a) On about May 17, 2018, during a negotiation session between the parties, the Union requested a copy of Respondent's contract with Bechtel.

(b) On about May 17 and 18, 2018, via emails to Respondent, the Union reiterated its request for a copy of Respondent's contract with Bechtel.

(c) On about May 20 and 24, 2018, via emails to Respondent, the Union explained its outstanding requests for a copy of Respondent's contract with Bechtel.

(d) By email dated May 20, 2018, the Union requested all communications between Bechtel and Respondent related to Respondent's employees, including but not limited to:

- (1) Emails and documents exchanged from the contract award date to current date;
- (2) Requested post transfers;
- (3) Discipline;
- (4) Negative reviews of employees; and
- (5) Lists of employees that are "good" and "bad."

(e) On about May 20 and 22, 2018, via emails, the Union requested all information concerning the cost of running the WTP contract, including but not limited to wages, benefits, overhead, and other related factors.

(f) *The information requested by the Union, as described above in paragraphs 6(a) through 6(e) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.*

(g) On various dates since about May 18, 2018, including but not limited to May 18, 21, and 24, 2018, Respondent, by Christopher Phillips ("Phillips") via emails, *has failed and/or refused to furnish the Union with the information requested by it, as described above in paragraphs 6(a) through 6(e).*

7.

By the conduct described above in paragraph 6, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of §§ 8(a)(1) and (5) of the Act.

8.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before November 12, 2018, or postmarked on or before November 11, 2018.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer

to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on 9 am on the 29th day of January, 2019, at a location to be determined in or around Richland, Washington, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Seattle, Washington, this 29th day of October, 2018.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle, WA 98174-1006

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

G4S SECURE SOLUTIONS (USA) INC.

and

Case 19-CA-221172

WASTE TREATMENT PLANT
SECURITY GUARDS UNION 161

ANSWER TO COMPLAINT AND NOTICE OF HEARING

G4S Secure Solutions (USA) Inc. (“Respondent”) responds as follows to the Complaint and Notice of Hearing (“Complaint”):

1. Respondent admits the allegations in paragraphs 1 of the Complaint.
2. (a) Respondent denies that it has an office in Richland, Washington, but otherwise admits the allegations in paragraph 2(a) of the Complaint.
 - (b) Respondent admits that, starting on or about November 13, 2017, Respondent became the contract provider of security services to Bechtel National, Inc. (“Bechtel”) at the Waste Treatment Plant (“WTP”) in Richland, Washington and at various other nearby related sites. Further answering, Respondent admits that, prior to that time, Securitas Security Services USA, Inc. (“Securitas”) was the contract provider of security services at the WTP. Further answering, Respondent admits that, since on or about November 13, 2017, Respondent has employed as a majority of its employees individuals who were previously employees of Securitas at the WTP. Further answering, Respondent denies all other allegations in paragraph 2(b) of the Complaint.

(c) Based on its operations as admitted in its response to paragraph 2(b) of the Complaint above, Respondent admits the allegations contained in paragraph 2(c) of the Complaint.

(d) Respondent admits that, based on conducting its business described in response to paragraphs 2(a)-(c) of the Complaint above and the rest of its operations and business throughout the United States, during this calendar year, a representative period, Respondent received gross revenues in excess of \$500,000. Further answering, Respondent denies any remaining allegations in paragraph 2(d) of the Complaint.

(e) Respondent admits that, based on conducting its business described in response to paragraphs 2(a)-(c) of the Complaint above and the rest of its operations and business throughout the United States, during this calendar year, a representative period, Respondent provided services directly to customers outside the State of Washington valued in excess of \$50,000. Further answering, Respondent denies any remaining allegations in paragraph 2(e) of the Complaint.

(f) Respondent admits the allegations in paragraph 2(f) of the Complaint.

3. Respondent admits the allegations in paragraph 3 of the Complaint.

4. Respondent admits the allegations in paragraph 4 of the Complaint.

5. Respondent admits the allegations in paragraphs 5(a)-(c) of the Complaint.

6. (a) Although Respondent does not recall that the Union requested a copy of Respondent's contract with Bechtel during a negotiation session, Respondent admits that the Union made such a request via email later in the day, after a negotiation session was concluded,

on May 17, 2018. Respondent denies any remaining allegations in paragraph 6(a) of the Complaint.

(b) Respondent admits the allegations in paragraph 6(b) of the Complaint.

(c) Respondent admits that on or about May 20 and 24, 2018, via emails to Respondent, the Union attempted to explain its outstanding requests for a copy of Respondent's contract with Bechtel, but denies that the Union provided any justification for why the Employer was obligated to provide a copy of this contract to the Union when a union generally is not entitled to such information under the Act. Respondent denies any remaining allegations in paragraph 6(c) of the Complaint.

(d) Respondent admits the allegations in paragraph 6(d) of the Complaint.

(e) Respondent admits the allegations in paragraph 6(e) of the Complaint.

(f) Respondent denies the allegations in paragraph 6(f) of the Complaint. A union generally is not entitled to any of the requested information under the Act. Despite the Employer's request that the Union do so, the Union, to date, has failed to provide any explanation for why any exception to the general rule applies. Further answering, the Complaint fails to set forth any allegations as to why any exception to the general rule would apply, such that the Union would be entitled to some or all of the requested information under the Act.

(g) Respondent admits the allegations in paragraph 6(g) of the Complaint.

7. Respondent denies the allegations in paragraph 7 of the Complaint.

8. Respondent denies the allegations in paragraph 8 of the Complaint.

/s/Fred Seleman

Vice President, Labor & Employment Law

G4S Secure Solutions (USA) Inc.

1395 University Boulevard

Jupiter, FL 33458

Phone: 561.691.6582

Fax: 561.691.6680

Email: fseleman@usa.g4s.com

Certificate of Service

On November 12, 2018, the foregoing was filed electronically and a copy served by way of electronic mail on the following.

David Dutro, President
Waste Treatment Plant Security Guards Union Local 161
1305 Knight Street
Richland, WA 99352-4103
dutro.david@gmail.com

Charging Party

/s/Fred Seleman

Vice President, Labor & Employment Law

G4S Secure Solutions (USA) Inc.

Cottrell, S. Nia

Joint Exhibit: D

From: dutro.david@gmail.com
Sent: Monday, June 11, 2018 11:27 AM
To: Cottrell, S. Nia
Subject: Fwd: Re: Request for information

Follow Up Flag: Follow up
Flag Status: Flagged

---Forwarded using **Multi-Forward Chrome Extension**---

From: David Dutro
Date: Sat May 19 2018 13:22:05 GMT+1000 (AEST)
Subject: Re: Request for information
To: "Christopher W. Phillips"

On Fri, May 18, 2018, 12:11 PM Christopher W. Phillips <christopher.w.phillips@usa.g4s.com> wrote:
David -

We respectfully disagree. If you think there is some specific reason why the contract is something to which the Union is entitled at this time or can point us to some NLRB case law that says such contracts are generally something to which a union is entitled, we will take another look at your request. Thanks.

Chris

Christopher W. Phillips
General Manager
G4S North America
Phone: (253) 872-1555
Mobile: (425) 343-8717
Email: christopher.w.phillips@usa.g4s.com
Web: g4s.us



On Fri, May 18, 2018 at 11:08 AM, David Dutro <dutro.david@gmail.com> wrote:
Chris,

The Union disagrees with your response.

The contract is necessary and relevant to our bargaining duties for our membership. We can agree to sign a confidentiality agreement. We absolutely have a right and a relevant need for that information.

The NLRB has agreed with us in the past that the contract between company and client is infact relevant information and as such I repeat my request.

Chris

Thank you,
David Dutro

On Fri, May 18, 2018, 10:18 AM Christopher W. Phillips <christopher.w.phillips@usa.g4s.com> wrote:
Good morning David -

While G4S recognizes the Union's right under federal labor law to certain information as part of its representative duties, G4S's contract with Bechtel is not a document to which the Union is entitled. As such, G4S is not in a position to provide a copy of that contract.

Is there a specific question you have that G4S can possibly provide some additional information or clarity?

Chris

Christopher W. Phillips
General Manager
G4S North America
Phone: (253) 872-1555
Mobile: (425) 343-8717
Email: christopher.w.phillips@usa.g4s.com
Web: g4s.us



On Thu, May 17, 2018 at 6:25 PM, David Dutro <dutro.david@gmail.com> wrote:

Hello Chris,

We would like to make a request of information on the contract between you and Bechtel, because it is relevant to our representative duties. This is the second request, if you recall I made a request during our first meeting please provide the information as soon as possible.

Thank you

David Dutro

This company is part of the G4S group of companies. This communication contains information which may be confidential, personal and/or privileged. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please note that any distribution, forwarding, copying or use of this communication or the information in it is strictly prohibited. Any personal views expressed in this e-mail are those of the individual sender and the Company does not endorse or accept

responsibility for them. Prior to taking any action based upon this e-mail message, you should seek appropriate confirmation of its authenticity. This message has been checked for viruses on behalf of the Company.

This company is part of the G4S group of companies. This communication contains information which may be confidential, personal and/or privileged. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please note that any distribution, forwarding, copying or use of this communication or the information in it is strictly prohibited. Any personal views expressed in this e-mail are those of the individual sender and the Company does not endorse or accept responsibility for them. Prior to taking any action based upon this e-mail message, you should seek appropriate confirmation of its authenticity. This message has been checked for viruses on behalf of the Company.



Cottrell, S. Nia

Joint Exhibit: E

From: dutro.david@gmail.com
Sent: Monday, June 11, 2018 11:27 AM
To: Cottrell, S. Nia
Subject: Fwd: Re: Union request of customer/client contract

Follow Up Flag: Follow up
Flag Status: Flagged

-----Forwarded using **Multi-Forward Chrome Extension**-----

From: David Dutro
Date: Tue May 22 2018 11:22:23 GMT+1000 (AEST)
Subject: Re: Union request of customer/client contract
To: "Christopher W. Phillips"

Hello Chris,

I understand that G4S believes that the requested information is not relevant, and do not feel the need to furnish it to the union. However, the justification that, "G4S feels it is not relevant" is not a legal defense. As such, we will move forward with the request to the NLRB, if you change your mind we will be willing to talk.

Thank you,
David Dutro

On Mon, May 21, 2018, 5:37 PM Christopher W. Phillips <christopher.w.phillips@usa.g4s.com> wrote:
Good evening David -

I am in receipt of your request for information. G4S has no reason to believe that any of the requested information is information or documents to which the Union is entitled under federal labor law. As such, G4S will not be providing any of the requested information. If the Union has anything that supports its belief that G4S is required to provide any of the requested information, please provide it and G4S will review the request again.

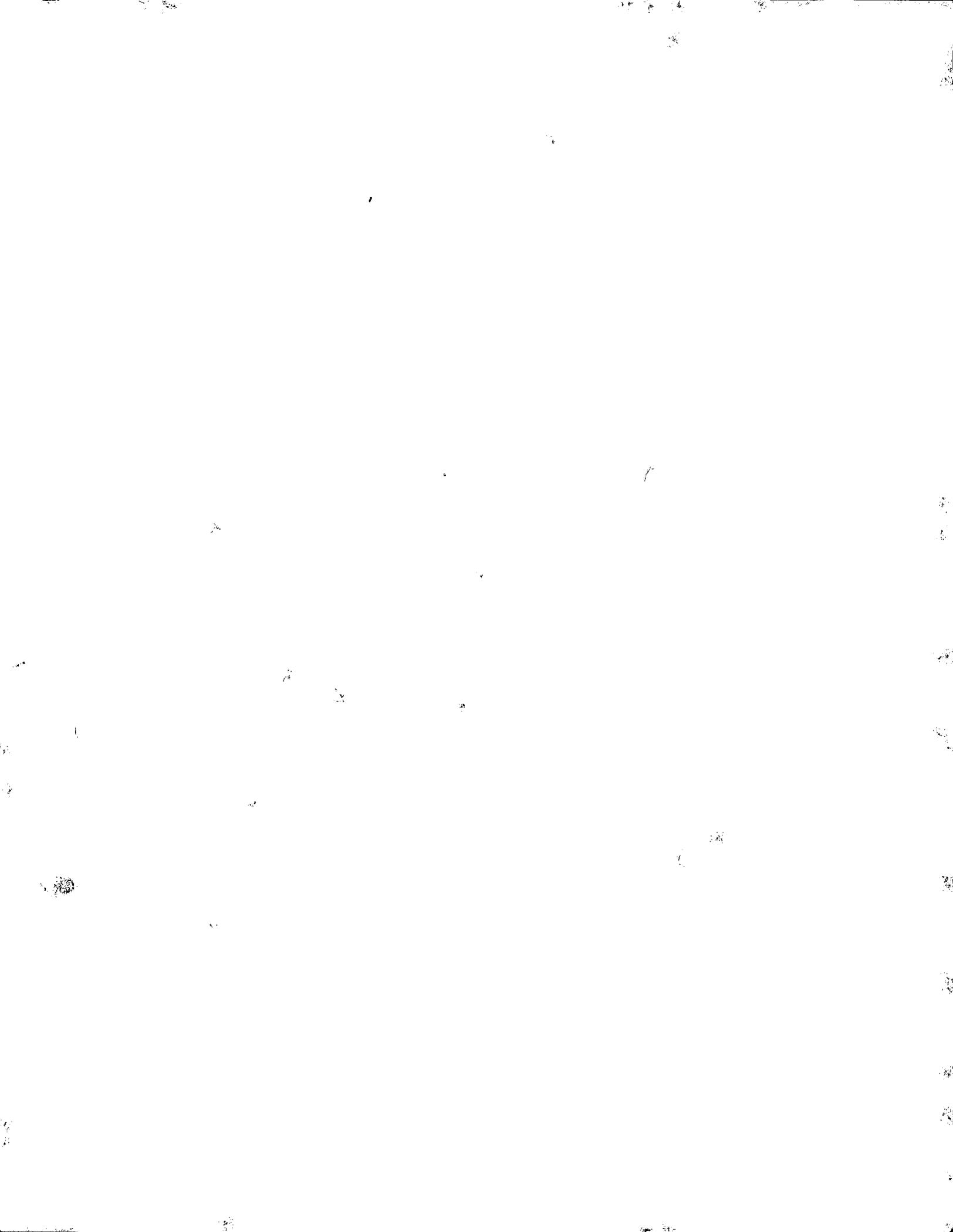
Chris

Christopher W. Phillips
General Manager
G4S North America
Phone: (253) 872-1555
Mobile: (425) 343-8717
Email: christopher.w.phillips@usa.g4s.com
Web: g4s.us



On Sun, May 20, 2018 at 10:39 PM, David Dutro <dutro.david@gmail.com> wrote:

42



Hello Chris,

Upon review I understand that our request of information, the contract between Bechtel and G4S, may have been a little vague.

So we would like to explain and expand on our reasons why we have requested the contract.

- Contractual obligations to the client from G4S, to ensure the union can assist in meeting said obligations
- Any and all information related to terms and conditions, wages, hours and work assignments, agreed to by G4S and Bechtel.
- For proper representation of the union members, any information related to officer and shift lead duties, including training, job descriptions, officer discipline, which is to include any information related to client request for removal of officers.
- Any and all information related to safety, including information about on shift safety representatives.
- The entirety of our work is based off this contract and is relevant based

Due to the sensitivity of the information, the union is willing to sign a non-disclosure agreement with you to show good faith in the matter.

Furthermore, we would like to request all information concerning the cost of running the WTP contract, including but not limited to wages, benefits, overhead etc.

The Union reserves the right to request further relevant information on this matter. Please provide this information by May 28th. 2018. Please notify me immediately if there are any difficulties in providing any of this information.

Respectfully,
David Dutro

This company is part of the G4S group of companies. This communication contains information which may be confidential, personal and/or privileged. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please note that any distribution, forwarding, copying or use of this communication or the information in it is strictly prohibited. Any personal views expressed in this e-mail are those of the individual sender and the Company does not endorse or accept responsibility for them. Prior to taking any action based upon this e-mail message, you should seek appropriate confirmation of its authenticity. This message has been checked for viruses on behalf of the Company.



Cottrell, S. Nia

From: dutro.david@gmail.com
Sent: Monday, June 11, 2018 11:27 AM
To: Cottrell, S. Nia
Subject: Fwd: Re: Response to denial of information request.

Follow Up Flag: Follow up
Flag Status: Flagged

---Forwarded using **Multi-Forward Chrome Extension**---

From: "Christopher W. Phillips"
Date: Thu May 24 2018 10:42:38 GMT+1000 (AEST)
Subject: Re: Response to denial of information request.
To: David Dutro
Cc: Devin Dallas , Travis Brett , Todd Hoyt , "Farmer, Michael (G4S Secure Solutions)"

Good evening David -

Thank you for forwarding those materials. However, after careful review, we don't see how they support the Union's claim that it is entitled to the requested information in connection with ongoing bargaining between the Union and G4S over a first CBA. As such, we will not be providing the requested information or contract.

Chris

Christopher W. Phillips
General Manager
G4S North America
Phone: (253) 872-1555
Mobile: (425) 343-8717
Email: christopher.w.phillips@usa.g4s.com
Web: g4s.us



On Tue, May 22, 2018 at 12:46 PM, David Dutro <dutro.david@gmail.com> wrote:

Hello Chris,

Upon further review and discussion, The Union has decided to supply you with an appropriate case that displays the contract between G4S and Bechtel is relevant in our bargaining duties and negotiations. Please review at your earliest convenience and furnish the requested contract, so that we may continue to move forward. Also as requested during our negotiations on Thursday, May 17th, 2018, here is the settlement agreement between The Union, Securitas and Bechtel. The settlement became official Mid-January 2018.

Additionally, we would like to request relevant financial information again that effects economic impacts for our negotiations. We find this critical to moving forward with our negotiations and to formulate an appropriate proposal for wages. Also, please supply us with detailed answers to the following:

- Wait to November for increase in wages
- Only 2-3% initial increase in wages
- Why the Company's position is that the client can dictate terms and conditions and remove officers, and direct their day to day work scope, as reflected in the company's management rights clause proposal, as well as prior discussions with you.

As always, we look forward to your response.

Thank you,

David Dutro
WTPSGU 161 President

This company is part of the G4S group of companies. This communication contains information which may be confidential, personal and/or privileged. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please note that any distribution, forwarding, copying or use of this communication or the information in it is strictly prohibited. Any personal views expressed in this e-mail are those of the individual sender and the Company does not endorse or accept responsibility for them. Prior to taking any action based upon this e-mail message, you should seek appropriate confirmation of its authenticity. This message has been checked for viruses on behalf of the Company.

Cottrell, S. Nia

Joint Exhibit: F

From: dutro.david@gmail.com
Sent: Monday, June 11, 2018 11:27 AM
To: Cottrell, S. Nia
Subject: Fwd: Re: Request for information

Follow Up Flag: Follow up
Flag Status: Flagged

----Forwarded using **Multi-Forward Chrome Extension**----

From: David Dutro
Date: Tue May 22 2018 11:22:58 GMT+1000 (AEST)
Subject: Re: Request for information
To: "Christopher W. Phillips"

Hello Chris,

I understand that G4S believes that the requested information is not relevant, and do not feel the need to furnish it to the union. However, the justification that, "G4S *feels* it is not relevant" is not a legal defense. As such, we will move forward with the request to the NLRB, if you change your mind we will be willing to talk.

Thank you,
David Dutro

On Mon, May 21, 2018, 5:30 PM Christopher W. Phillips <christopher.w.phillips@usa.g4s.com> wrote:
Good evening David -

I am in receipt of your request for information. G4S has no reason to believe that any of the requested information is information or documents to which the Union is entitled. As such, G4S will not be providing any of the requested information. If the Union has anything that supports its belief that G4S is required to provide any of the requested information, please provide it and G4S will review the request again.

Chris

Christopher W. Phillips
General Manager
G4S North America
Phone: (253) 872-1555
Mobile: (425) 343-8717
Email: christopher.w.phillips@usa.g4s.com
Web: g4s.us



On Sun, May 20, 2018 at 10:41 PM, David Dutro <dutro.david@gmail.com> wrote:
Hello Chris,

42



This is a request of information for communication between the client, Bechtel, and G4S related to employees. This is including, but not limited to, emails and documents exchanged from the contract award date to current date. Any and all information, which is including and not limited to requested post transfers, discipline, negative reviews of employees, lists of employees that are "good" and "bad", etc., shared between the two entities relating to employees is requested.

The Union reserves the right to request further relevant information on this matter. Please provide this information by May 28th, 2018. Please notify me immediately if there are any difficulties in providing any of this information.

Respectfully,
David Dutro

This company is part of the G4S group of companies. This communication contains information which may be confidential, personal and/or privileged. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please note that any distribution, forwarding, copying or use of this communication or the information in it is strictly prohibited. Any personal views expressed in this e-mail are those of the individual sender and the Company does not endorse or accept responsibility for them. Prior to taking any action based upon this e-mail message, you should seek appropriate confirmation of its authenticity. This message has been checked for viruses on behalf of the Company.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

Joint Exhibit: G

IN THE MATTER OF

Securitas Security Services USA, Inc. and
Bechtel National, Inc., Joint Employers

Case 19-CA-191814

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

MAILING NOTICE - After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in. A responsible official of the Charged Party will then sign and date those Notices. The Charged Party will then copy and mail, at its own expense, a copy of the attached Notice to all employees who worked for the Employer, pursuant to its contract with Bechtel National, Inc., at any point on or after November 1, 2016. Those Notices will be signed by a responsible official of the Charged Party and show the date of mailing. The Charged Party will provide the Regional Director written confirmation of the date of mailing and a list of names and addresses of members to whom the Notices were mailed.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON ADMISSIONS — By signing this Agreement, the Charged Party does not admit that it violated the National Labor Relations Act or that it is a joint employer with Bechtel National, Inc.

BACKPAY - Within 14 days from approval of this agreement, the Charged Party will make whole the employee(s) named below by payment to each of them of the amount opposite each name. The Charged Party will make appropriate withholdings for each named employee. No withholdings should be made from the interest portion of the backpay.

Anton Way — \$1,884 plus daily compound interest

Sydney Hall - \$1,005 plus daily compound interest

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence. By approving this Agreement the Regional Director withdraws any Complaint(s) and Notice(s) of Hearing previously issued in the above case(s), and the Charged Party withdraws any answer(s) filed in response.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

RL



AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on October 25, 2017 in the instant case(s), maintaining the reference to joint employer status in the caption of the Complaint but deleting all allegations regard joint employer status and making any additional modification necessary to limit the Complaint to named Respondent. Thereafter, the General Counsel may file a motion for default judgment with the Board on the remaining allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel. Notwithstanding the provisions of this paragraph, default shall be asserted only for the same or similar conduct that occurs at or arises out of Oregon or Washington, within six months of the approval of this Agreement.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

[Handwritten signature]
2/22/17

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(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

The International Guards Union of America, Region 1 (the "Union") is your representative in dealing with us regarding wages, hours and other working conditions of all full-time and regular part-time security guards, including leads, employed by us at the Waste Treatment Plant in Richland, Washington; excluding all other employees, office clerical employees, confidential employees, and supervisors as defined in the Act.

WE WILL NOT refuse to recognize and bargain in good faith with the Union as your exclusive collective-bargaining representative.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT, during contract negotiations, without first providing notice to, and bargaining with the Union to lawful impasse or otherwise in good faith, make changes in work hours and schedules that result in your layoff, or may changes to any other of your terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WOULD HAVE, upon request of the Union, restored to our bargaining unit employees all terms and conditions of employment as they existed prior to January 2017, including but not limited to work hours and schedules.

WE WILL pay Anton Way and Sydney Hall for the wages and other benefits they lost because we laid them off on January 13, 2017.

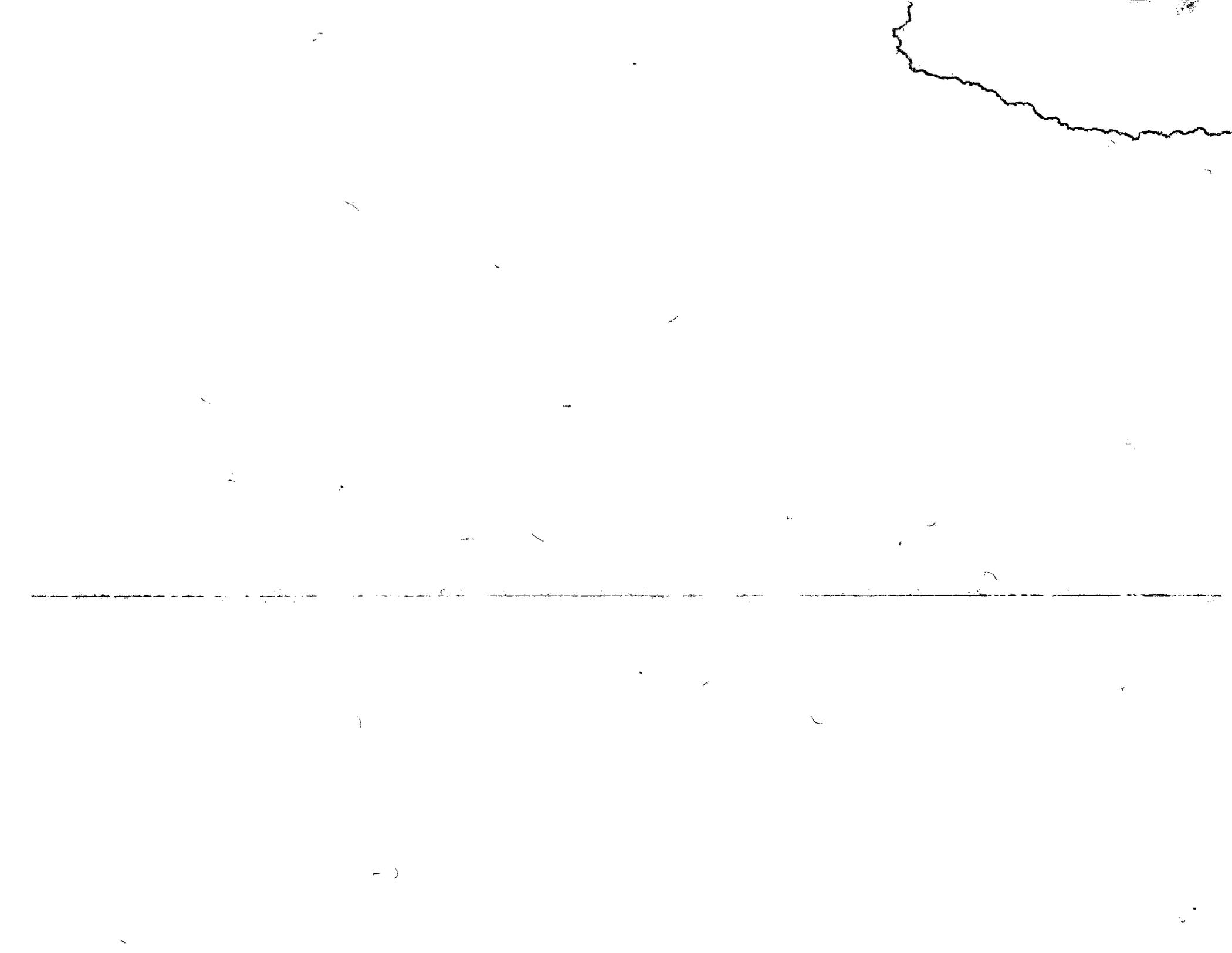
Securitas Security Services USA, Inc.

(Employer)

Dated: _____

By: _____
(Representative) (Title)

RLC



The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

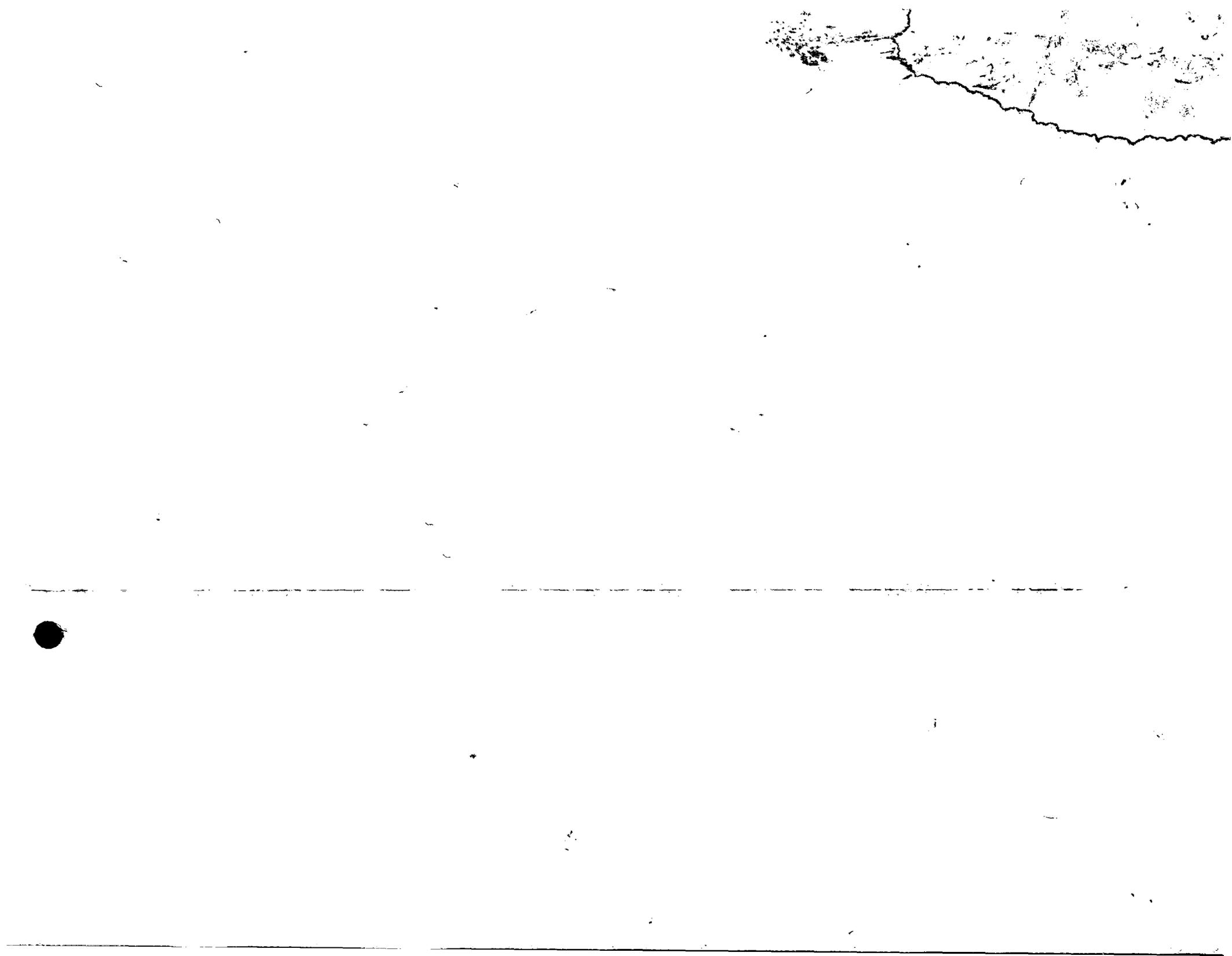
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Telephone: (206)220-6300
Hours of Operation: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

KK



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

Joint Exhibit: G1

IN THE MATTER OF

**Securitas Security Services USA, Inc. and
Bechtel National, Inc., Joint Employers**

Case 19-CA-191814

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

MAILING NOTICE - After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in. A responsible official of the Charged Party will then sign and date those Notices. The Charged Party will then copy and mail, at its own expense, a copy of the attached Notice to all employees who worked for the Employer, pursuant to its contract with Bechtel National, Inc., at any point on or after November 1, 2016. Those Notices will be signed by a responsible official of the Charged Party and show the date of mailing. The Charged Party will provide the Regional Director written confirmation of the date of mailing and a list of names and addresses of members to whom the Notices were mailed.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON ADMISSIONS – By signing this Agreement, the Charged Party does not admit that it violated the National Labor Relations Act or that it is a joint employer with Bechtel National, Inc.

BACKPAY - Within 14 days from approval of this agreement, the Charged Party will make whole the employee(s) named below by payment to each of them of the amount opposite each name. The Charged Party will make appropriate withholdings for each named employee. No withholdings should be made from the interest portion of the backpay.

Anton Way – \$1,884 plus daily compound interest

Sydney Hall - \$1,005 plus daily compound interest

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence. By approving this Agreement the Regional Director withdraws any Complaint(s) and Notice(s) of Hearing previously issued in the above case(s), and the Charged Party withdraws any answer(s) filed in response.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

Mc
12/20/17

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____
 Initials

No _____
 Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on October 25, 2017 in the instant case(s), maintaining the reference to joint employer status in the caption of the Complaint but deleting all allegations regard joint employer status and making any additional modification necessary to limit the Complaint to named Respondent. Thereafter, the General Counsel may file a motion for default judgment with the Board on the remaining allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel. Notwithstanding the provisions of this paragraph, default shall be asserted only for the same or similar conduct that occurs at or arises out of Oregon or Washington, within six months of the approval of this Agreement.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

[Handwritten signature]
12/20/17

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

The International Guards Union of America, Region 1 (the "Union") is your representative in dealing with us regarding wages, hours and other working conditions of all full-time and regular part-time security guards, including leads, employed by us at the Waste Treatment Plant in Richland, Washington; excluding all other employees, office clerical employees, confidential employees, and supervisors as defined in the Act.

WE WILL NOT refuse to recognize and bargain in good faith with the Union as your exclusive collective-bargaining representative.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT, during contract negotiations, without first providing notice to, and bargaining with the Union to lawful impasse or otherwise in good faith, make changes in work hours and schedules that result in your layoff, or ~~may~~ ^{MAKE} changes to any other of your terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WOULD HAVE, upon request of the Union, restored to our bargaining unit employees all terms and conditions of employment as they existed prior to January 2017, including but not limited to work hours and schedules.

WE WILL pay Anton Way and Sydney Hall for the wages and other benefits they lost because we laid them off on January 13, 2017.

Securitas Security Services USA, Inc.

(Employer)

Dated: _____

By: _____

(Representative)

(Title)

12/20/17
JL

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Telephone: (206)220-6300
Hours of Operation: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

12/20/17
J.C.

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

Joint Exhibit: H

DATE: September 5, 2017

TO: Ronald K. Hooks, Regional Director
Region 19

FROM: Jayme L. Saphir, Associate General Counsel
Division of Advice

SUBJECT: Securitas Security Services USA, Inc., and 177-1650-0100-0000
Bechtel National, Inc., joint employers 530-4825-5000-0000
Case 19-CA-191814 530-8054-0100-0000
530-8054-6500-0000

The Region submitted this case for advice as to whether the Union waived its right to bargain with Bechtel, a joint employer, when the Union's August 2016 representation petition only named Bechtel's subcontractor, Securitas, as the employer. We conclude that the Union did not waive its right to bargain with Bechtel as a joint employer during the representation proceedings because the Union was not fully aware of the relationship between Bechtel and Securitas and the Union's conduct does not evidence a conscious and deliberate pursuit of a bargaining relationship limited solely to Securitas. We further conclude that the failure to name Bechtel as a joint employer will not deprive Bechtel of due process within the meaning of *Alaska Roughnecks and Drillers Association v. NLRB*,¹ because Bechtel has received timely notice of its alleged joint employer status and will continue to have an opportunity to challenge that allegation during the instant unfair labor practice proceedings. Finally, we conclude that the Region should solicit an Amendment of Certification (AC) petition from the Union, and process that in conjunction with the unfair labor practice charge.

FACTS

Pursuant to a contract with the United States Department of Energy ("DOE"), Bechtel National, Inc. ("Bechtel") is contracted to design, build, and commission an immense treatment plant, the Waste Treatment Plant, to process and sterilize radioactive waste at the Hanford Site² in south central Washington State. The Waste

¹ 555 F.2d 732 (9th Cir. 1977), *cert. denied*, 434 U.S. 1069 (1978).

² Commissioned in 1943, the Hanford Site was home to both weapons-grade plutonium production reactors and, eventually, power reactors for the civilian

Treatment Plant (“WTP”) has been under construction since 2002 and comprises numerous buildings over the sixty-five acre Hanford Site. The WTP is scheduled to become operational at some point between 2022 and 2039. Under Bechtel’s contract with the DOE, Bechtel is required to provide certain specified levels of security at the WTP.

In 2008, Bechtel subcontracted its security work for both the WTP and its off-site office buildings in Richland, Washington to Securitas Security Services USA, Inc. (“Securitas”). The current contract is set to expire in 2018, but has several options for extensions. The contract also contains a range of provisions relevant to Bechtel’s control over Securitas’ employees’ terms and conditions of employment on a daily basis. Securitas employs approximately twenty-four security officers who provide security services to Bechtel’s Richland offices and the WTP site.

A. The Securitas Security Officers Obtain Union Representation

In April 2016,³ several security officers employed by Securitas began to discuss obtaining union representation. Shortly thereafter, the Securitas security officers contacted International Guards Union of America, Local 21 (“Local 21”), an independent local organized under IGUA, Region 1 (“the Union”). Local 21 represents a unit of guards employed by a company directly contracted by the DOE to provide site-wide and perimeter security for the Hanover Site. Local 21 has no paid staff or representatives; rank-and-file members employed at the Hanover Site handle matters of both contract administration and enforcement. Likewise, the Union is a member-run organization and appears to have no professional staff. On August 22, Local 21’s president, acting in his capacity as Region 1’s vice president, filed a representation petition⁴ on behalf of the security guards employed by Securitas. The Union’s petition named “Securitas Security Services USA/ Waste Treatment Plant” as the employer. On August 29, Securitas and the Union entered into a stipulated election agreement providing for a mail ballot election for a unit of twenty-four Securitas security officers. Between September 15 and October 6, the Region conducted a mail ballot election with eighteen security officers voting in favor of representation and none voting

electrical grid until the final reactor was decommissioned in 1987. As of 2007, the Hanford Site was home to roughly two-thirds of the nation’s high-level radioactive waste by volume. The Site also currently hosts a commercial nuclear power plant and various scientific laboratories.

³ All dates hereinafter are in 2016, unless otherwise noted.

⁴ Case 19-RC-182558.

against representation. On October 14, the Region issued the certification of representation naming Securitas as the employer and the Union as the collective-bargaining representative.⁵ At no point during the processing of the representation case did the Union or Securitas raise the relationship between Bechtel and Securitas. There is no evidence that any of Securitas' employees informed the Union that Bechtel exerts either direct or indirect control over Securitas' employees' terms and conditions of employment.⁶ There is also no evidence that Local 21's president, who had never filed a representation petition before, had any knowledge of Bechtel's daily control over the Securitas security officers' terms and conditions of employment.

B. After the Union's Certification, its Newly-Appointed Officers Learn of Bechtel's Control Over Their Terms and Conditions of Employment

On November 4, the Union apprised Securitas that it had elected seven bargaining-unit security officers to serve as its officers and representatives. Throughout November, the Union learned that Bechtel was demanding certain changes to its staffing practices at Bechtel's Richland offices. Also, on approximately November 7, one of the unit security guards received several verbal warnings at the direction of one of Bechtel's WTP security supervisors. On November 9, the Union's newly-elected Local 161 president and another Union officer went to discuss the November 7 verbal warnings with Bechtel's Security and Safety Manager. At that meeting, Bechtel's Security and Safety Manager repeatedly asked the Union officers why they had unionized and told them that Bechtel had known that the security officers were planning to unionize since the beginning of the security officers' organizing activity. The Union officers ended the meeting because the Bechtel manager's questions were making them uncomfortable.

On November 21, Local 161 filed Case 19-CA-188637 alleging that both Securitas and Bechtel, as joint employers, violated Sections 8(a)(1), 8(a)(3) and (5) for, *inter alia*, refusing to bargain with the Union.⁷ On November 30, the Union requested that

⁵ Subsequent to the election, the Union created a new local, Local 161, for the purpose of representing the unit of Securitas security officers.

⁶ Some of the more senior Securitas security officers were aware that Bechtel had, on occasion, both directly disciplined Securitas security officers in the past and required Securitas to make changes to security procedures. There is no evidence that the Union or its agents were aware of these instances of Bechtel control prior to or during the processing of the representation proceedings.

⁷ The Union later withdrew this charge, on December 20, because it had not yet requested to bargain with Bechtel.



Securitas provide a copy of its contract with Bechtel as well as some other information in order to aid it in developing contract proposals. On December 12, Securitas provided most of the information that Union requested but refused to provide a copy of its contract with Bechtel because it did not see the relevance of that information. On December 19, the Union responded to Securitas and explained that the contract between Securitas and Bechtel was relevant because it likely had information that affects security officers' job duties, wages, and benefits. On December 22, Securitas responded to the Union and stated it was the sole employer of the security officers and that it was fully prepared to bargain with the Union.

On December 22, the Union's president sent Bechtel a letter stating that:

"[The Union] is the sole and exclusive collective bargaining [agent] of the security guards and lead security guards at the [WTP]. This notice is to inform you [the Union] believes based on recent acts and unilateral changes that Bechtel is a Joint Employer with Securitas and as such is ready to bargain the terms and conditions of employment resulting in a fair Collective Bargaining Agreement."

C. In January 2017, Securitas Informs the Union that Bechtel has Ordered a Reduction in Force

On January 5, 2017, the Union and Securitas held their first bargaining session. At the beginning of the bargaining session, the Union presented a number of proposals to Securitas dealing with uniforms, hours of work, and work during severe weather events. Securitas replied that those topics were economic issues and it did not wish to bargain over those issues at that time. The Union's bargaining team, comprised solely of Securitas security officers, allowed Securitas to move on to non-economic subjects. Towards the end of the bargaining session, Securitas told the Union that, effective mid-January 2017, there would be a reduction in force pursuant to Bechtel's determination that it did not require as much security on evenings and weekends. As a result, two full-time security officers would be displaced and used to fill in for security officers who were on leave. Although the Union's president objected to the displacement of the two employees, Securitas responded that the only other option would be to reduce all employees' hours and Securitas had no interest in doing that. The Union believed that Securitas had no genuine intention to bargain over announced reduction in force in any way and the bargaining session ended.

Also on January 5, 2017, Bechtel responded that it had received the Union's December 22 letter and forwarded it to Securitas. Bechtel went on to state that "Bechtel National, Inc. is not a joint employer with Securitas." That same day, the Union repeated its request that Securitas provide a copy of its contract with Bechtel in order to fully determine the scope of Bechtel's and Securitas' relationship. On

January 7, 2017, the Union again requested the contract between Bechtel and Securitas and strongly objected to the proposed reduction in force. The Union also objected to using the displaced employees as fill-in security officers and made a number of proposals in the event Securitas followed through with the reduction in force. On January 10, Securitas rejected all of the Union's proposals and interpreted its objection to using the displaced guards as fill-ins as a request to simply lay the employees off. Securitas also again refused to provide a copy of its contract with Bechtel to the Union, stating:

Securitas employs the Security Officers at this site and as such hires, disciplines, assigns tasks/duties, sets the wages and benefits, etc. We are more than happy to answer any questions you have as to what these employees do, and what their terms and conditions of employment are. Also, we are fully prepared to bargain with you over their terms and conditions of employment. For these reasons, the Company's contract with the client, a third party who is not the employer, is irrelevant to negotiations on our CBA.

Later that day, the Union responded that it preferred the displaced employees to be used as fill-ins rather than laid-off. Securitas agreed to honor that request. On January 16, 2017, Securitas eliminated the two full-time positions and began offering the displaced employees fill-in shifts, as available.

The Union and Securitas subsequently met for bargaining on March 15, March 16, and April 18, 2017. Securitas, though willing to discuss some of the Union's economic proposals, has not offered any counterproposals. Nevertheless, the Union and Securitas have reached tentative agreements on a range of other matters. Bechtel has not participated in any of these bargaining sessions.

D. The Instant Unfair Labor Practice Charge

On January 25, 2017,⁸ the Union filed the instant unfair labor practice charge alleging that Securitas and Bechtel, as joint employers, violated Section 8(a)(1) and (5). Specifically, the charge alleges that: 1) Bechtel unlawfully refused to bargain with the Union; 2) Bechtel and Securitas unlawfully refused to provide the contract between them; 3) Bechtel and Securitas unlawfully reduced and changed available shifts through the January 16, 2017 reduction in force without bargaining; and 4) Bechtel's Security and Safety Manager interrogated employees as to their union

⁸ The initial charge was amended February 7, 2017.

activity and gave the impression that their union activity was under surveillance on November 6, 2016.⁹

On February 6, 2017, the Region sent Bechtel a letter appraising it of the allegations against it, including its joint employer relationship with Securitas. The Region requested that Bechtel provide witnesses for interview and documentary evidence related to the Region's investigation into the Union's allegations, including a copy of Bechtel's contract with Securitas. The Region also requested that Bechtel provide a position statement responding to the Union's allegations, including Bechtel's joint employer status. On March 13, 2017, Bechtel, through legal counsel, responded to the Region's February 6 requests by denying that Bechtel was a joint employer with Securitas and refusing to provide any documentary evidence in relation to the Region's investigation of Bechtel's joint employer status prior to the Region's determination that an unfair labor practice had occurred.

On March 20, 2017, in light of Bechtel's refusal to cooperate with the Region's investigation, the Region requested that the Board issue an investigatory subpoena duces tecum. On March 24, 2017, the Board approved the Region's request for an investigatory subpoena to obtain additional documents from Bechtel in order to determine Bechtel's status as a joint employer, including a copy of Bechtel's contract with Securitas. On April 24, Bechtel complied with the Board's subpoena and provided the requested information, including the contract between Bechtel and Securitas. Based on this newly-acquired evidence, the Region has determined that Bechtel is a joint employer with Securitas for the Securitas security officers represented by the Union.

ACTION

We conclude that the Union did not waive its right to bargain with Bechtel as a joint employer during the representation proceedings because the Union was not fully aware of the relationship between Bechtel and Securitas and the Union's conduct does not evidence a conscious and deliberate pursuit of a bargaining relationship limited solely to Securitas. We further conclude that the failure to name Bechtel as a joint employer will not deprive Bechtel of due process within the meaning of *Alaska Roughnecks and Drillers Association v. NLRB*,¹⁰ because Bechtel has received timely notice of its alleged joint employer status and will continue to have an opportunity to challenge that allegation during the instant unfair labor practice proceedings.

⁹ The Union alleged several other violations of Sections 8(a)(1), (3), and (5). The Region has determined that there is no merit to these allegations.

¹⁰ 555 F.2d 732 (9th Cir. 1977), *cert. denied*, 434 U.S. 1069 (1978).

Finally, we conclude that the Region should solicit an Amendment of Certification (AC) petition from the Union because the Board might determine, consistent with *Alaska Roughnecks*, that an AC petition is the appropriate vehicle for imposing a bargaining obligation in cases where a joint employer could have been, but was not, named during the initial representation proceedings.

A. The Union Did Not Waive its Right to Bargain with Bechtel by Failing to Name it as a Joint Employer During the Representation Proceedings

The Board will find that two employers are joint employers of the same statutory employees if they “share or codetermine those matters governing the essential terms and conditions of employment.”¹¹ The appropriate timeframe for determining “whether employers are to be considered joint . . . is that period surrounding the unfair labor practices.”¹² Generally, all of the companies that share a joint employer relationship have a duty to bargain with their shared employees’ bargaining representative.¹³ The Board has regularly found a bargaining obligation even as to a joint employer that is not signatory to a collective-bargaining agreement between a union and the other joint employer.¹⁴ Moreover, the Board has held that certification of one employer does not prohibit it from imposing a bargaining obligation on another joint employer of the employees in the bargaining unit.¹⁵ Changes in control and/or

¹¹ *BFI Newby Island Recyclery*, 362 NLRB No. 186, slip op. at 2 (Aug. 27, 2015) (citing *NLRB v. Browning-Ferris Indus. of Pennsylvania, Inc.*, 691 F.2d 1117, 1123 (3d Cir. 1982)).

¹² *CNN America, Inc.*, 361 NLRB No. 47, slip op. at 8 (Sept. 15, 2014) (citing *Goodyear Tire & Rubber Co.*, 312 NLRB 674, 676 (1993)).

¹³ See, e.g., *W. W. Grainger, Inc.*, 286 NLRB 94, 96 (1987), *enforcement denied on other grounds*, 860 F.2d 244 (7th Cir. 1988); *Whitewood Maintenance*, 292 NLRB 1159, 1159, 1168 (1989), *enforced*, 928 F.2d 1426 (5th Cir. 1991); *Sun-Maid Growers of California*, 239 NLRB 346, 353–54 (1978), *enforced*, 618 F.2d 56 (9th Cir. 1980).

¹⁴ *D & S Leasing*, 299 NLRB 658, 660 & n.9, 672–73 (1990), *enforced*, 954 F.2d 366 (6th Cir. 1992); *W. W. Grainger, Inc.*, 286 NLRB at 97; *American Air Filter Co.*, 258 NLRB 49, 53–54 (1981); *Ref-Chem Co.*, 169 NLRB 376, 379–82 (1968), *enforcement denied*, 418 F.2d 127 (5th Cir. 1969).

¹⁵ See *CNN America, Inc.*, 361 NLRB No. 47, slip. op at 8 (rejecting argument that Board’s certification and successive collective-bargaining agreements omitting alleged joint and/or successor employer barred subsequent joint employer finding), *enforcement denied on other grounds*, No. 15-1209, 2017 WL 3318834 (D.C. Cir. Aug.

ownership of employers of a particular bargaining unit can create bargaining obligations for additional entities despite what is stated in an original certification.¹⁶

The Board has determined that, in certain situations, a union may waive its right to bargain with a joint employer by failing to assert the joint employer relationship during the representation proceedings. However, employees' right to bargain with a joint employer through their bargaining representative is not easily waived. In determining whether a union has waived its right to bargain with an employer, such a waiver must be "clear and unmistakable."¹⁷ In both *Goodyear Tire & Rubber Co.* and *Aldworth, Co.*, the union had full knowledge of the joint employer relationship at the time that it filed the representation petition but failed to name the alleged joint employer.¹⁸ Then, subsequent to the certification, and without a change in the control exerted by the alleged joint employer, the union attempted to have the Board

4, 2017). See also *Central Transport*, 306 NLRB 166, 166 (1992) (finding alleged joint employer had a bargaining duty notwithstanding that it was not a participant in the representation proceeding because it stipulated to joint employer status), *enforcement denied*, 997 F.2d 1180 (7th Cir. 1993); *American Air Filter Co.*, 258 NLRB at 52 (rejecting argument that certification naming only one employer bars litigation of alleged joint employer status in unfair labor practice proceeding); *U.S. Pipe & Foundry Co.*, 247 NLRB 139, 139–43 (1980) (employers were joint employers even though this was not stated on the certification).

¹⁶ See *NLRB v. Burns Int'l Sec. Servs.*, 406 U.S. 272, 279–80 (1972) (employer has an obligation to bargain as a successor even it was not named on the certification or part of the original representation proceeding); *Corbel Installations, Inc.*, 360 NLRB No. 3, slip op. at 1 (Sept. 19, 2013) (employer that acquired company two months after certification of a union to represent the company's employees had an obligation to recognize and bargain with that union).

¹⁷ *Provena St. Joseph Medical Center*, 350 NLRB 808, 810–11 (2007); see generally *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

¹⁸ See *Aldworth*, 338 NLRB at 141 (when the union filed its petition, it was "fully aware" of the employee-leasing arrangement between the labor supplier and its alleged joint employer customer); *Goodyear*, 312 NLRB at 688 (union representative testified that when the union filed the petition, he was aware of the relationship between the driver-leasing company and its alleged joint employer customer, a chemical plant operator).

impose a bargaining obligation on the alleged joint employer.¹⁹ In both of those cases, the Board determined that a union's conduct at the time that it initially sought recognition through a representation petition was "comparable to a waiver"²⁰ or "essentially"²¹ a waiver of bargaining rights that the union otherwise would have had with respect to the joint employer. Thus, when a union fails to assert a joint employer relationship during representation proceedings, the Board will find that the union has waived the right to bargain with that joint employer where the union had full knowledge of the joint employer relationship during the representation proceeding and, through its conduct in those proceedings, consciously and deliberately pursued a bargaining relationship limited to the employer named in the certification of representation.²²

The D.C. Circuit has generally endorsed the Board's waiver approach.²³ In *Computer Associates*, the D.C. Circuit rejected the Board's joint employer finding

¹⁹ See *Aldworth*, 338 NLRB at 141 (union filed a charge seeking a *Gissel* bargaining order against an alleged joint employer that it had not named in its stalled representation petition); *Goodyear*, 312 NLRB at 688 (union filed a charge alleging that chemical plant operator was a joint employer approximately seven months after the union was certified and after the chemical plant operator had terminated its contract with the employer named in the certification).

²⁰ *Goodyear*, 312 NLRB at 689.

²¹ *Aldworth Co.*, 338 NLRB at 140–41.

²² See *Aldworth Co.*, 338 NLRB at 140–41 (union "essentially waived" bargaining rights with joint employer where union was "fully aware of lease agreement between" employers; union's failure to name joint employer during representation proceedings demonstrates "a conscious and deliberate pursuit of a bargaining relationship limited" solely to one employer); *Goodyear*, 312 NLRB at 688–89 (where union agent testified that he was "aware" of relationship between putative joint employers in some detail during the representation proceedings, union made a "deliberate decision, comparable to waiver" to only name the primary employer during representation proceedings).

²³ See *Dunkin' Donuts*, 363 F.3d at 440 ("when a union, knowing the relationship between two companies, deliberately names only one of the companies in its representation petition and its stipulation for an election, and requests bargaining only with that company, it may not later substitute another company"); *Computer Assocs. Int'l, Inc. v. NLRB*, 282 F.3d 849, 851–52 (D.C. Cir. 2002) (union's act of stipulating to a single employer during representation proceeding when the union's initial petition had claimed joint employers binding on the parties absent "changed

because, in the earlier representation proceeding, the parties' stipulation had named only one employer.²⁴ But the *Computer Associates* court found that the parties' stipulation and the subsequent certification of representative remained "presumptive[ly]" binding on the parties where the union had initially named the joint employer in its election petition, and then *abandoned* that assertion by agreeing to a stipulation of election that named only one employer as the "sole employer."²⁵ Subsequently, in enforcing the Board's decision in *Aldworth*, the D.C. Circuit articulated its approval of the Board's approach in *Goodyear* and explained that "when a union, knowing the relationship between two companies, *deliberately names only one of the companies in its representation petition and its stipulation for an election*, and requests bargaining only with that company, it may not later substitute another company."²⁶

In the instant case, the Union did not consciously waive its right to bargain collectively with Bechtel because it did not possess sufficient knowledge of Bechtel's status as a joint employer prior to the October 14 certification.²⁷ Initially, unlike *Goodyear*, there is no evidence that any Securitas security officer ever communicated any details of their limited knowledge of Bechtel's daily control over Securitas employees (through the issuance of discipline and setting of work rules) to the Union

circumstances"). Other courts of appeals have concluded that a post-representation proceeding finding of joint employer is prohibited where the putative joint employer did not "intervene[ene] in a labor dispute" after the certification. *See Alaska Roughnecks & Drillers Ass'n v. NLRB*, 555 F.2d 732, 36 (9th Cir. 1977); *Cent. Transp., Inc.*, 997 F.2d at 1186. *See generally infra* discussion and cases cited in Section B.

²⁴ *Computer Assocs. Int'l*, 282 F.3d at 851–52.

²⁵ *Id.* at 850–51.

²⁶ *Dunkin' Donuts*, 363 F.3 at 440 (emphasis added).

²⁷ We note that Bechtel is liable as a joint employer for violations of Sections 8(a)(1) and 8(a)(3), such as the alleged unlawful statements made by Bechtel's manager on November 9, regardless of its bargaining obligation. *See Dunkin' Donuts*, 363 F.3d at 440 (enforcing Board finding that union waived its right to bargain with joint employer but did not waive its right to hold joint employer liable for violations of Sections 8(a)(1) and (3) (citing *Goodyear Tire & Rubber*, 312 NLRB at 688–89)).

prior to or during the representation proceedings.²⁸ Moreover, even if the Union had some knowledge of Bechtel's control over Securitas' employees' terms and conditions of employment, the Union did not have the whole picture until it began representing employees after the October 14 certification.²⁹ After the Union had elected its initial local officers, all relatively less-senior Securitas security officers, the Union's officers began to realize the role that Bechtel had over their terms and conditions of employment based on the early November security procedure changes required by Bechtel and Bechtel's manager's statements on November 9 after a Bechtel manager disciplined a security guard. After these two events, the Union almost immediately took action to assert a bargaining obligation on Bechtel as a joint employer.³⁰ Since November 30, the Union has attempted to learn more about the nature of Bechtel's and Securitas' relationship from both entities by requesting relevant information, such as the contract between the two companies. Both Securitas and Bechtel have refused to provide the Union with any information and, instead, continue to assert that Securitas is the sole employer of security officers. To this day, unlike the union in *Aldworth* that had a "full knowledge" of the lease agreement between the two employers, the Union still does not have a complete understanding of the companies' relationship because both Bechtel and Securitas continue to refuse to provide the Union with necessary information, such as the contract between the companies.³¹ Finally, unlike *Goodyear*, at all material times prior to the certification, security

²⁸ Cf. *Goodyear*, 312 NLRB at 688 (union agent testified that employees had discussed their confusion as to their employers' relationships during representation proceedings).

²⁹ Cf. *Aldworth Co.*, 338 NLRB at 141 (union was "fully aware" of employers' relationship when it had full knowledge of the employers' lease agreement during representation proceedings).

³⁰ Although the Union did not request bargaining until December 22, the Union's November 22 unfair labor practice charge in Case 19-CA-188637 demonstrates its first attempt to assert Bechtel as a joint employer. The Union withdrew that charge on December 20 after it realized that its failure to request bargaining with Bechtel precluded a Section 8(a)(5) failure to bargain violation. See, e.g., *NLRB v. Alva Allen Indus.*, 369 F.2d 310, 321 (8th Cir. 1966) ("A union cannot charge an employer with refusal to negotiate when it has made no attempts to bring the employer to the bargaining table." (citing *NLRB v. Columbian Enameling & Stamping Co.*, 306 U.S. 292 (1939))).

³¹ See *Aldworth Co.*, 338 NLRB at 141 (union had full knowledge of joint employer relationship where it was "fully aware" of lease between primary and joint employer).

officers believed they were employed solely by Securitas.³² Thus, at all points prior to the Union's certification on October 14, the Union did not possess the clear understanding of the relationship between Bechtel and Securitas that Board law requires in order for the Union to waive its right to bargain with Bechtel as a joint employer.

Furthermore, the Union's course of conduct during the representation proceeding does not demonstrate that it consciously and deliberately pursued a bargaining relationship limited solely to Securitas. First, unlike *Computer Associates*, where the union asserted a joint employer relationship in the initial petition but later, in a stipulated election agreement, agreed to an election only with the "sole employer," the Union here never asserted at any point during the representation proceeding that Bechtel was a joint employer.³³ The August 22 petition, the August 29 stipulation to election, the October 14 certification, and all other documents pertaining to identity of interested parties in the representation case all identify Securitas alone as the employer of the employees. Additionally, there is no evidence that Bechtel committed any unfair labor practices or overtly interfered with terms or conditions of employment in such a way as to alert the Union to its role during the pendency of the representation proceedings. In *Aldworth*, a *Gissel* case, the alleged joint employer committed numerous discreet violations of Sections 8(a)(1) and 8(a)(3) while the representation case was pending.³⁴ The Board concluded that the union consciously and deliberately did not pursue a bargaining relationship with the joint employer where the union never attempted to amend its election petition to name the joint employer despite the joint employer's overt interference.³⁵ Here, in contrast, Bechtel did not interfere with the employees' unionization efforts or their terms and conditions of employment during the brief pendency of the representation proceedings. Moreover, neither Local 21's president nor the Securitas security officers had ever handled representation proceedings before the Board and there is no indication they understood the significance of Bechtel's control until after the election. Accordingly, in light of the Union's ignorance of Bechtel's joint employer relationship with Securitas, the Union's course of conduct during the representation proceeding

³² See *Goodyear*, 312 NLRB at 689 (in assessing merits of joint employer allegation, ALJ noted that employees discussed their "supposed confusion" as to who their employer was with the union's agent during the representation proceedings).

³³ *Computer Assocs. Int'l*, 282 F.3d at 851-52.

³⁴ *Aldworth Co.*, 338 NLRB at 140-41.

³⁵ *Id.* at 141.

cannot be interpreted as a conscious and deliberate abandonment of a bargaining relationship with Bechtel.

B. Bechtel Will Not Be Deprived of Due Process by the Union's Failure to Assert its Status as a Joint Employer in the Representation Proceedings

Two courts of appeals have held that a union is absolutely prohibited from asserting a joint employer bargaining obligation after the certification of representation has issued where the employers' relationship existed during the representation case, except in extenuating circumstances. Both the Seventh³⁶ and Ninth Circuits³⁷ have held that, generally, the failure to name a joint employer on the certification of representation precludes the imposition of a bargaining obligation except through the Board's Amendment of Certification (AC) proceedings.³⁸

In *Alaska Roughnecks*, the Ninth Circuit rejected the Board's joint employer finding on due-process grounds where the union had failed to amend its representation petition or file an AC petition asserting the joint employer's bargaining obligation.³⁹ There, the union did not request to bargain with the primary employer's customer (the joint employer) until six months after the customer had ended its relationship with the primary employer.⁴⁰ The union filed an unfair labor practice charge against the customer when it refused to bargain with the union as a successor employer.⁴¹ The customer was not aware that the Board was considering that the customer was actually a joint employer rather than a successor until the investigation was complete and complaint issued.⁴² The court concluded that, under the specific facts of that case, the notice the customer received from the Board that it

³⁶ See *Cent. Transp., Inc.*, 997 F.2d at 1186 (AC petition required under Board's rules and regulations)

³⁷ See *Alaska Roughnecks*, 555 F.2d at 736 (AC petition required on constitutional due process grounds).

³⁸ 29 C.F.R. § 102.61(e).

³⁹ *Alaska Roughnecks*, 555 F.2d at 735–36.

⁴⁰ *Id.* at 734.

⁴¹ *Id.* at 734.

⁴² *Id.* at 734.

was a joint employer was “wholly inadequate” and the Board was precluded from finding that the customer was a joint employer where that had not been litigated in the representation proceeding.⁴³ The court acknowledged, however, that the outcome might have been different if the customer had “either intervened in [the employer’s] labor dispute with the union . . . or been approached by the union earlier”⁴⁴

We disagree with the Ninth Circuit’s suggestion in *Alaska Roughnecks* that the due process rights afforded to joint employers during unfair labor practice proceedings are less than those afforded during representation proceedings.⁴⁵ Representation proceedings are intended principally to determine “the interests of *employees* in being represented by the designated union, the scope of the appropriate unit, and the employees to be included therein.”⁴⁶ The Board’s role in such proceedings is that of a “neutral investigator.”⁴⁷ Although employers have some interest in representation proceedings, those proceedings are merely administrative and are not final dispositions of the substantive rights of the parties, which can be determined only when the Board acts as a prosecutor whose duty it is to protect against violations of the Act.⁴⁸ In addition, the failure of a union to utilize AC proceedings to assert a

⁴³ *See id.* at 735 (concluding that the customer had a due-process right to timely “notice and an opportunity to be heard” and “an effective opportunity to defend” itself regarding its status as a joint employer.).

⁴⁴ *Id.* at 737; *see also Cent. Transp., Inc. v. NLRB*, 997 F.2d at 1187 (rejecting Board’s joint employer finding where union “did not inform [trucking company] that it deemed [trucking company] a joint employer until after” trucking company’s contract with driver-leasing company, the employer named in the Board certification, had been canceled; finding that Board’s regulations require it be bound by certification determination, at least where purported joint employer had not intervened in the labor dispute).

⁴⁵ *See American Air Filter Co.*, 258 NLRB at 52 (certification of one employer does not bar litigation of the status of alleged joint employer in a subsequent unfair labor practice proceeding; to conclude otherwise, “misperceives the nature of representation hearings and the certification process” because representation proceedings are not final dispositions of substantive rights of parties).

⁴⁶ *American Air Filter Co.*, 258 NLRB at 52.

⁴⁷ *Id.* at 52–53.

⁴⁸ *Cf. Associated General Contractors of California v. NLRB*, 564 F.2d 271, 276–78 & n. 7 (9th Cir. 1977) (holding that courts of appeals are only permitted to review the

bargaining obligation on a joint employer does not deprive a putative joint employer of due process because due process safeguards are present in both the investigatory and prosecutorial stages of the Board's unfair labor practice cases. A putative joint employer will be given notice of its alleged joint employer status and a timely opportunity to challenge that claim. In order to file a meritorious refusal-to-bargain charge against a joint employer, the union normally must first notify the joint employer of its asserted relationship to the primary employer and request bargaining.⁴⁹ Once the unfair labor practice charge has been filed, the joint employer will receive notice of that allegation and an opportunity to present evidence, witness testimony, and its legal arguments to the Regional Director if it wishes to challenge its alleged status as a joint employer during the investigatory phase of the case.⁵⁰ Thus, under normal circumstances, joint employers are given abundant notice and opportunity to challenge their status as joint employers during the investigation and consideration of unfair labor practice charges.⁵¹ Because an employer is given ample opportunity to fully litigate the question of its joint employer status in the unfair labor practice proceeding, it would "elevate form over substance" to find that the employer was prejudiced by the union's failure to name it as a joint employer in the representation proceedings.⁵²

Board's certifications of representation indirectly through review under Section 10(f) of subsequent Board unfair labor practice decisions regardless of whether the representation proceedings precede or occur concurrently with the unfair labor practice proceedings); 5 U.S.C. § 554(a)(6) (excluding "certification[s] of worker representatives from the class of cases requiring adjudication on the record and opportunity for an agency-held hearing).

⁴⁹ *Alva Allen Indus.*, 369 F.2d at 321.

⁵⁰ See *NLRB v. Bancroft Mfg. Co.*, 516 F.2d 436, 445–46 (5th Cir. 1975) (Regional Director's decision to decide objectionable election conduct in unfair labor practice proceeding rather than representation proceeding did not violate company's due process rights because unfair labor practice proceedings "boast[] all of those procedural safeguards ordinarily associated with the concept of due process").

⁵¹ Cf. *Chamber of Commerce v. NLRB*, 2015 WL 4572948, at *28 (D.D.C. July 29, 2015) ("[t]he demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective") (internal quotation marks and citations omitted).

⁵² *American Air Filter Co.*, 258 NLRB at 52–53. Cf. *NLRB v. Aaron Bros. Corp.*, 563 F.2d 409, 413 (9th Cir. 1977) (Regional Director's power to both investigate and

Here, Bechtel has been provided ample due process within the meaning of *Alaska Roughnecks* even though the Union did not assert that Bechtel was a joint employer until after the certification of representation. First, Bechtel has been provided notice of its potential bargaining obligation as a joint employer with Securitas.⁵³ On December 22, the Union contacted Bechtel and asserted that it was a joint employer with Securitas and requested bargaining. Thus, unlike the union in *Alaska Roughnecks* that only contacted the joint employer after it terminated its contract with the primary employer, the Union here approached Bechtel early in its collective-bargaining relationship with Securitas.⁵⁴ Bechtel also received timely notice of the Region's investigation into the joint employer allegation. After the Union filed the instant unfair labor practice charge, the Region served a copy of that charge on Bechtel and informed Bechtel of the Region's investigation into the Union's allegations—including Bechtel's joint employer status. Thus, Bechtel, unlike the customer in *Alaska Roughnecks*, has been notified by both the Union and the Board of its alleged joint employer status long-prior to the issuance of an unfair labor practice complaint.

Second, unlike the customer in *Alaska Roughnecks*, Bechtel has already been afforded ample opportunity to be heard and to challenge its status as a joint employer throughout the Region's investigation. On February 9, the Region apprised Bechtel of its right to present documentary evidence, witness testimony, and position statements during the Region's investigation of the Union's joint employer allegation. On March 13, 2017, in response to the Region's February 9, 2017 notice, Bechtel provided its legal position to the Region denying its joint employer status. At that time, Bechtel refused to provide documentary evidence necessary for the Region to determine if Bechtel is a joint employer until the Region had determined that an unfair labor

adjudicate election objections in unfair labor practice proceedings does not raise due process concerns).

⁵³ Cf. *Alaska Roughnecks*, 555 F.2d at 734–35 (union's unfair labor practice charge against primary employer's customer alleged that it was a successor employer; General Counsel's decision to issue complaint was first notice that the customer had from either the Board or the union that the customer was considered a joint employer).

⁵⁴ See *id.* at 737 (observing that the court's result may have been had different had the joint employer "been approached by the union earlier").

practice had even occurred.⁵⁵ Thus, Bechtel has not only had an opportunity to challenge the Union's allegations during the Region's investigation, but it has affirmatively refused to fully comply with the Region's investigation. Nevertheless, after the Region issues complaint in this case, Bechtel will *still* be provided with the opportunity to present its evidence, witnesses, and legal arguments before the ALJ, confront the evidence and witnesses relied upon by the General Counsel, and, should Bechtel so choose, seek review of the ALJ's factual and legal determinations before the Board and, ultimately, a United States court of appeal with jurisdiction over the parties.⁵⁶ In sum, the fact that Bechtel's joint employer status was not alleged nor litigated in the representation case has not and will not deprive it of its due process rights.

Nevertheless, the Region should solicit an AC petition from the Union seeking to add Bechtel, as a joint employer with Securitas, to the certification of

⁵⁵ In order for the Region to appropriately investigate the allegations in this case, including Bechtel's joint employer status, the Board approved the Region's use of an investigatory subpoena to obtain the needed information from Bechtel.

⁵⁶ We note that a joint employer that was not involved in or named in a representation petition may actually be in a more advantageous position to litigate its status in a case such as this as opposed to a technical Section 8(a)(5) proceeding. In technical Section 8(a)(5) cases, a Regional Director's factual conclusions in an underlying representation proceeding, such as to joint employer status, are afforded some deference and the joint employer is usually barred from raising new arguments that it failed to raise in the representation case. *See NLRB v. Sav-on Drugs*, 704 F.2d 1147, 1149 (9th Cir. 1983) (observing that, under Section 3(b) and the Board's regulations, unreviewed representation decisions of Regional Directors are afforded the same weight and deference as Board decisions); *see also Seattle Opera v. NLRB*, 292 F.3d 757, 766 (D.C. Cir. 2002) (noting that a party is foreclosed from raising issues in technical Section 8(a)(5) cases that could have been litigated before the Regional Director—but weren't—in representation cases); *NLRB v. Red-More Corp.*, 418 F.2d 890, 893–94 (9th Cir. 1969) (deferring to Regional Director's prior finding and conclusion of joint employer because "fully litigated representation proceedings, such as the joint employer relation here involved, are entitled to some degree of finality in a subsequent unfair labor practice case"). Conversely, where a joint employer's status was not litigated in a representation case, a Regional Director's allegation of joint employer status in an unfair labor practice proceeding will be afforded no deference whatsoever and must be proven by a preponderance of the evidence before the ALJ.

representation.⁵⁷ Initially, we note that neither the Board's rules and regulations nor the Act itself requires a union to utilize AC proceedings in order to assert a joint employer bargaining relationship after the issuance of certification.⁵⁸ However, since *Alaska Roughnecks*, the Board has never addressed whether AC petitions are the appropriate vehicle to address the circumstance, such as the instant case, where an existing joint employer relationship was unknown to a union during a representation case and the union later tries to assert such a relationship.⁵⁹ As a precautionary measure in case the Board should decide that AC proceedings are the proper vehicle to assert a joint employer obligation where the putative joint employer was not included on the certification, the Region should solicit an AC petition from the Union prior to issuing complaint in the instant case and process that in conjunction with the unfair labor practice case.⁶⁰

⁵⁷ In *Microsoft Corporation*, Case 19-CA-162985, Advice Memorandum dated March 1, 2016, we did not instruct the Region to solicit an AC petition in similar circumstances because we concluded that, *inter alia*, the joint employer had intervened in the union's labor dispute within the meaning of *Alaska Roughnecks*.

⁵⁸ Compare *U.S. Security Associates*, Case 1-AC-98, Decision and Order (Sept. 6, 2007) (dismissing AC petition on grounds that it is not the appropriate vehicle to add another employer to the certification), with *W. L. Golightly, Inc.*, 172 NLRB 2155, 2155-56 (1968) (rejecting on the merits a union's request to amend a certification to include a joint employer).

⁵⁹ In its 1993 decision in *Central Transportation*, the Seventh Circuit adopted the Ninth Circuit's interpretation of the Board's AC petition regulations (29 C.F.R. § 102.61(e)), as the appropriate vehicle to impose a bargaining obligation on a joint employer. 997 F.2d at 1186. Since that decision, we are unaware of any guidance from the Board either in its case law or its rulemaking that clarifies whether AC Petitions may/should be utilized to add a joint employer to a certification of representation.

⁶⁰ After complaint has issued and if appropriate, the Region should consolidate the AC petition and unfair labor practice case in a combined proceeding. See *National Labor Relations Board Casehandling Manual Part Two: Representation Proceedings* § 11490.3 (January 2017).

Accordingly, after the Region has received the Union's AC petition seeking to add Bechtel as a joint employer with Securitas to the certification of representative, the Region should issue complaint, absent settlement, alleging that Bechtel, as a joint employer with Securitas, has violated Section 8(a)(5) by refusing to bargain with the Union.

/s/
J.L.S.

ADV.19-CA-191814.Response.SecuritasSecurity.jlf

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

G4S SECURE SOLUTIONS (USA), INC.

and

Case 19-CA-221172

**WASTE TREATMENT SECURITY GUARDS
UNION 161**

AFFIDAVIT OF SERVICE OF JOINT MOTION AND STIPULATION OF FACTS.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 30, 2019, I served the above-entitled document(s) by E-File and e-mail upon the following persons, addressed to them at the following addresses:

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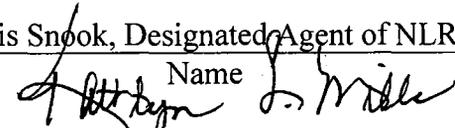
/s/ DENNIS SNOOK

January 30, 2019.

Date

Dennis Snook, Designated Agent of NLRB

Name



Kathlyn L. Mills, Secretary