UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

SPECTRUM JUVENILE JUSTICE SERVICES

Respondent

and

CASE 07-CA-199731
07-CA-208944

INTERNATIONAL UNION, SECURITY POLICE, AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Charging Party SPFPA

And

LOCAL 120, INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Charging Party Local 120

RESPONDENT'S MOTION TO DISMISS
OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT

On August 30, 2018, Region 7 issued a Complaint against Spectrum Juvenile Justice Services ("SJJS" or Respondent) based solely and completely on the principle, enunciated in *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106 (Aug. 26, 2016)("*Total Security*"), that an employer has an obligation to bargain before imposing discipline even though the parties have not executed an initial collective bargaining agreement.

On June 23, 2020, the National Labor Relations Board ("Board") overruled *Total Security* -- a decision that changed an employer's duty to bargain over discipline with a newly certified union prior to reaching a first collective-bargaining agreement. In its June

23, 2020 decision in *800 River Road Operating Company, LLC d/b/a Care One at New Milford*, 369 NLRB No. 109 (*"800 River Road"*), the Board reinstated 80 years of precedent that employers have no statutory obligation to bargain before imposing discretionary discipline that is materially consistent with the employer's established policy or practice.

The Board further ruled that it is appropriate to apply the *800 River Road* decision retroactively --"'to all pending cases in whatever stage.'" *Id. at *5.*

As more fully set forth in the accompanying Memorandum in Support of Motion to Dismiss, Respondent is entitled to dismissal of the Complaint against it pursuant to Federal Rule of Civil Procedure 12(b)(6) because the Complaint does not state a claim upon which relief can be granted. Alternatively, summary judgment should be entered in favor of Respondent pursuant to Federal Rule of Civil Procedure 56 because the evidence in the record demonstrates "that no genuine issues of material fact exist and that the movant is entitled to judgment as a matter of law."

Respectfully submitted,

BERRY MOORMAN P.C.

/s/ Sheryl L. Laughren
Sheryl L. Laughren (P34697)
Attorney for Respondent
535 Griswold, Suite 1900
Detroit, MI 48226
(313) 496-1200
slaughren@berrymoorman.com

Date: July 14, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of July, 2020, a copy of the foregoing was filed electronically. A copy was served via email on (Matt@unionlaw.net), and Patricia.Fedewa@nlrb.gov

/s/ Sheryl L. Laughren

Sheryl L. Laughren (P34697)
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And

LOCAL 120, INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Charging Party Local 120

RESPONDENT'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

I. INTRODUCTION

On August 30, 2018, Region 7 issued a Complaint against Spectrum Juvenile Justice Services ("SJJS" or Respondent) based on the principle, enunciated in *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106 (Aug. 26, 2016)("*Total Security*"), that an employer has an obligation to bargain before imposing discipline even though the parties have not executed an initial collective bargaining agreement.

The only basis on which Region 7 pursued its Complaint against SJJS was its contention, based on *Total Security*, that SJJS had an obligation to negotiate with the Union over discipline, even though no initial contract had been entered into. There is no

allegation that the Respondent has modified any of its disciplinary rules or practices, nor is there any allegation of Section 8(a)(3) violations.

On June 23, 2020, the National Labor Relations Board ("Board") overruled *Total Security* -- a decision that changed an employer's duty to bargain over discipline with a newly certified union prior to reaching a first collective-bargaining agreement. In its June 23, 2020 decision in *800 River Road Operating Company, LLC d/b/a Care One at New Milford*, 369 NLRB No. 109 (*"800 River Road"*), the Board reinstated 80 years of precedent that employers have no statutory obligation to bargain before imposing discretionary discipline that is materially consistent with the employer's established policy or practice.

The Board's *800 River Road* decision explains how the pre-discipline bargaining obligation created in 2016 conflicted with prior United States Supreme Court and Board precedent, misconstrued the Supreme Court's unilateral-change doctrine with respect to what constitutes a material change in working conditions, and imposed a complicated and burdensome bargaining scheme that was irreconcilable with the general body of law governing statutory bargaining practices.

The Board further ruled that it is appropriate to apply the *800 River Road* decision retroactively --"'to all pending cases in whatever stage.'" *Id. at *5.* Therefore, applying the appropriate standard to the case currently before the Board, Respondent SJJS did not have a duty to provide the Union with notice and an opportunity to bargain prior to suspending and/or discharging the employees as alleged in the Complaint. As a result, the Complaint against SJJS must be dismissed.

II. COMPLAINT ALLEGATIONS – UNCONTESTED FACTS

On March 3, 2016, in Case 07-RC-169521, a representation election was conducted among a bargaining unit consisting of youth workers and security workers at two maximum security juvenile detention facilities (jails) operated by SJJS (the "Unit").[Second Consolidated Amended Complaint ("Complaint") Para. 7,8][1]

On March 24, 2016, the Security, Police and Fire Professionals of America ("SPFPA") was certified as the exclusive collective-bargaining representative of the Unit. [Complaint Para. 8(b)].

At no time since March 3, 2016, have the SPFPA and the Respondent been parties to a collective bargaining agreement. [Complaint Para. 8(e)].

After the SPFPA was certified as the collective bargaining representative of the Unit, Respondent discharged 13 employees, as alleged in Paragraph 9(a) of the Complaint") and suspended 44 employees, as alleged in Paragraph 9(b) of the Complaint. [Complaint Para. 9(c)]. Respondent exercised discretion in imposing the disciplines described in Paragraphs 9(a) and 9(b) of the Complaint. Further, Respondent engaged in the conduct described in Paragraphs 9(a) and 9(b) without affording the SPFPA an opportunity to bargain with Respondent with respect to its conduct. [Complaint Para. 10].[2]

The Complaint alleges that by its conduct as alleged in Paragraphs 9(a), 9(b) and 10, Respondent violated Section 8(a)(1) and (5) of the Act. [Complaint Para. 11]. There is no other unfair labor practice alleged in the Complaint.

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[1] A copy of the Complaint is attached as Exhibit 1.

[2] In its Answer to Second Consolidated Amended Complaint, Respondent admitted the allegations contained in Paragraphs 9(a) and 9(b). Further, Respondent admitted Paragraph 10's allegation that it did not provide the Charging Party with prior notice of the disciplines and did not afford the Charging Party with an opportunity to bargain with Respondent with respect to the disciplinary actions until April 23, 2018.

III. APPLICABLE LAW

On June 23, 2020 the Board overruled *Total Security* in *800 River Road*. In so doing, the Board reinstated 80 years of precedent that employers have no statutory obligation to bargain before imposing discretionary discipline that is materially consistent with the employer's established policy or practice. See, Board News: Publications, Board Restores Longstanding Standard for Employee Discipline in Advance of a First Contract, https://www.nlrb.gov/news-outreach/news-story/board-restores-longstanding-standard-for-employee-discipline-in-advance-of

The Board's *800 River Road* decision explains how the pre-discipline bargaining obligation created in 2016 conflicted with prior Supreme Court and Board precedent, misconstrued the Supreme Court's unilateral-change doctrine with respect to what constitutes a material change in working conditions, and imposed a complicated and burdensome bargaining scheme that was irreconcilable with the general body of law governing statutory bargaining practices.

For those reasons, and others, the Board overruled the new bargaining requirements imposed by *Total Security* and returned to long-standing law establishing that, upon commencement of a collective-bargaining relationship, and where no initial contract exists, employers do not have an obligation under Section 8(d) and 8(a)(5) of the Act to bargain prior to disciplining unit employees in accordance with an established disciplinary policy or practice. 369 NLRB No. 109 at *29-30.

The Board further ruled that it is appropriate to apply the *800 River Road* decision retroactively --"'to all pending cases in whatever stage,'" finding that to do otherwise would "produc[e] a result which is contrary to a statutory design or to legal and equitable

principles." *Id. at *5, 30-33* (citations omitted). *"Total Security"* 'was contrary to decades-old Board and Court precedent, and it was ill-advised on policy grounds. Accordingly, we find that application of our new standard in this and all pending cases will not work a 'manifest injustice.'"

Thus, applying the principles set forth in *800 River Road,* the Complaint against SJJS must be dismissed as it is founded solely on a prior decision which has been specifically overturned. Applying the appropriate standard to the case currently before the NLRB, Respondent SJJS did not have a duty to provide the Union with notice and an opportunity to bargain prior to suspending and/or discharging the employees as alleged in the Complaint. There is no other unfair labor practice allegations alleged in the Complaint.

Because the Complaint does not contain allegations sufficient to state a cause of action against Respondent, the Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.[3] Alternatively, SJJS is entitled to summary judgment of claims against it pursuant to Federal Rule of Civil Procedure 56.

The Board uses the summary judgment standard outlined in Fed. R. Civ. P. 56(c). *Manville Forest Products Corp.,* 269 N.L.R.B. 390 (1984). Summary judgment therefore is appropriate when the evidence in the record demonstrates "that no genuine issues of material fact exist and that the movant is entitled to judgment as a matter of law." *L'Hoist North America of Tennessee,* 362 NLRB No. 110, slip op at 1 (2015); *In re Mellott,* 187 B.R. 578, 581 (Bkrtcy. N.D. Ohio, 1995). To prevail, SJJS must show the absence of genuine

[3] Section 10(b) of the Act provides that Board hearings "shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district court of the United States under rules of civil procedure for the district courts of the United States."

issues of material fact to support the non-moving party's case. *Mellott*, at 581; *Resolution Trust Corp. v. Fountain Circle Associates Ltd. Partnership*, 799 F.Supp. 48, 51 (N.D. Ohio 1992).

In turn, to overcome SJJS's motion, the General Counsel must do more than "simply show that there is some metaphysical doubt as to the material facts." *Bennet v. State Farm Mut. Auto Ins. Co.*, 943 F.Supp. 821, 823 (N.D. Ohio 1996); *Matsushita Electrical Industrial Co. Ltd. v. Zenity Radio Corporation*, 475 U.S. 574, 586 (1986). Mere reliance upon the pleadings or allegations is insufficient. *Copeland v. Machulis*, 57 F.3d 476, 579 (6th Cir. 1995).

IV. CONCLUSION

The Complaint, on its face, and in light of the undisputed facts and controlling law, fails to allege a violation of the Act and must be dismissed accordingly.

Respectfully submitted,

BERRY MOORMAN P.C.

/s/ Sheryl L. Laughren
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Date: July 14, 2020

EXHIBIT 1

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

SPECTRUM JUVENILE JUSTICE SERVICES

Respondent

and

Cases 07-CA-199731
07-CA-208944

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Charging Party SPFPA

and

LOCAL 120, INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Charging Party Local 120

THIRD ORDER CONSOLIDATING CASES, SECOND CONSOLIDATED AMENDED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, **IT IS ORDERED THAT** Case 07-CA-199731 which is based on a charge filed by Charging Party SPFPA and Case 07-CA-208944 which is based on a charge filed by Charging Parties SPFPA and Local 120, respectively, against Respondent are consolidated.

This Third Order Consolidating Cases, Second Consolidated Amended Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 07-CA-199731 was filed by Charging Party SPFPA on May 31, 2017, and a copy was served on Respondent by U.S. mail on that same date.

(b) The charge in Case 07-CA-208944 was filed by Charging Party SPFPA and Charging Party Local 120 on October 30, 2017, and a copy was served on Respondent by U.S. mail on October 31, 2017.

2. At all material times, Respondent, a corporation with facilities in Highland Park, Michigan (Highland Park facilities), has been engaged in the operation of a maximum security juvenile detention center.

3. In conducting its operations during the calendar year ending December 31, 2017, Respondent purchased and received at its Highland Park facilities goods valued in excess of $50,000 directly from points outside the State of Michigan.

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

5. At all material times, Charging Party SPFPA and Charging Party Local 120 have each been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act. Where a first name is not given, the first names are not known to the General Counsel, but are well known to Respondent:

Melissa Fernandez	Executive Director
James Wiser	Human Resources Business Partner
Oliver Cooper	Lincoln Center Director
Mira Kronk	Senior Human Resource Generalist
Florida Tobar	Human Resource Generalist
Marlong Bradford	Manager
Paul Brown	Shift Supervisor
Doug Burket	Operation Director
Cornelius Burton	Shift Supervisor
Michael Caston	Shift Supervisor
James Crawford	Shift Supervisor
Damien Dix	Security Supervisor
Larry Edwards	Shift Supervisor
Prince Fullerton	Shift Supervisor
Kerwin Johnson	Shift Supervisor
Bridget Richards	Shift Supervisor
Leroy Sherrod	Facilities Manager
Darryl Watson	Shift Supervisor

7. The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part-time armed and unarmed security officers, including direct care and youth workers performing guard duties as defined in Section 9(b)(3) of the Act, employed by Respondent at its facilities located at 300 Glendale, and 1961 Lincoln, Highland Park, Michigan; but excluding all office clerical employees, professional employees, and supervisors as defined by the Act.

8. (a) On March 3, 2016, in Case 07-RC-169521, a representation election was conducted among the employees in the Unit.

(b) On March 24, 2016, Charging Party SPFPA was certified as the exclusive collective-bargaining representative of the Unit, and on August 17, 2016, a corrected certification of representative issued to accurately reflect Respondent facilities.[1]

(c) At all times since March 3, 2016, based on Section 9(a) of the Act, Charging Party SPFPA has been the exclusive collective-bargaining representative of the Unit.

(d) At all material times, Charging Party Local 120 has been the servicing representative of the Unit for Charging Party SPFPA

(e) At all times since March 3, 2016, Respondent, Charging Party SPFPA, and/or Charging Party Local 120 have not been parties to a collective bargaining agreement.

9. (a) On or about the dates set forth below Respondent discharged the following employees:

Tariq Ali	December 31, 2017
Zorana Averett	May 4, 2017
Acacia Brown	February 13, 2018
Crystal Bullock	December 28, 2017
Shavonne Calhoun	October 24, 2017
Shamika DeBerry	August 1, 2017
Forrester Hatton	April 11, 2017
Phyllis Johnson	November 22, 2017
Derrick King	September 21, 2017
Anthony Mays	January 14, 2018

[1] On August 17, 2016, a Corrected Certification of Representation issued wherein the unit description was corrected to reflect the location of Respondent's facilities from 300 Glendale and 1961 Lincoln, Highland, Michigan to 300 Glendale and 1961 Lincoln, Highland Park, Michigan.

Christopher Stanley	April 20, 2017
Phillip Timms	September 15, 2017
Shurjea Watson	September 4, 2017

(b) On or about the dates set forth below Respondent suspended the following employees:

Terrance Bernoudy	July 27, 2017
	August 16, 2017
Tony Bradford	June 21, 2017
	March 30, 2018
Crystal Bullock	November 30, 2017
	December 22, 2017
James Calhoun	June 28, 2017
Michael Carter	September 4, 2017
Lisa Crawford	September 30, 2017
	November 2, 2017
Carlotta Davis	July 20, 2017
	September 23, 2017
Porshia Dean	October 11, 2017
	May 30, 2017
D'Andre Haliburton	August 8, 2017
	October 24, 2017
Anita Harper	July 14, 2017
	August 2, 2017
Albert Hatcher	November 21, 2017
	January 9, 2018
Desmond Hill	May 29, 2017
Hakeem IdDeen	November 21, 2017
	January 30, 2018
Carleton Johnson	July 9, 2017
	August 16, 2017
	October 5, 2017
Phyllis Johnson	September 23, 2017
Tamika Kelley	April 10, 2017
	April 25, 2017
	April 3, 2018
Monique Lewis	October 20, 2017
Sadaf Sarnaghi Marzban	June 6, 2017
Lilresa Merchant	May 30, 2017
Mark Matheny	August 2, 2017
Mildred Milliken	May 24, 2018
Rodgers, Millini	December 8, 2017
Renee Morton	May 31, 2017
	June 22, 2017

Curtis Mosley	May 10, 2017
	November 19, 2017
Timothy Murphy	May 19, 2017
Brenda Peterson	May 27, 2017
Je'Neece Randle	April 6, 2017
	May 11, 2017
	August 21, 2017
Semaj Santiago	October 24, 2017
	December 14, 2017
	December 28, 2017
	March 28, 2018
Sadaf Sarnaghi	June 6, 2017
Frederick Smith	May 22, 2017
Deonta Spikes	January 16, 2018
	March 8, 2018
	March 27, 2018
Jose Spraggins	April 27, 2017
	May 21, 2017
Christopher Stanley	April 14, 2017
Precious Strickland	August 18, 2017
Carlos Swoope	June 3, 2017
	October 2, 2017
	December 1, 2017
	February 19, 2018
Curron Thomas	May 22, 2017
	June 12, 2017
Marvin Tolbert	May 3, 2017
	May 27, 2017
	July 20, 2017
	March 13, 2018
Antonio Vaughn	July 17, 2017
	August 6, 2017
	September 19, 2017
Clifford Wade	October 24, 2017
Shurjea Watson	June 14, 2017
Albert Webb	April 1, 2017
Erb Wilder	April 22, 2017
Ken Wittstock	May 3, 2017
	June 23, 2017
	October 27, 2017
Khahlila Woodward	July 20, 2017
	August 3, 2017

(c) Respondent exercised discretion in imposing the disciplines described above in paragraphs 9(a) and (b).

(d) The subjects set forth in paragraphs 9(a) through (c) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

10. Respondent engaged in the conduct described above in paragraph 9 without prior notice to the Charging Parties and without affording the Charging Parties an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

11. By the conduct described above in paragraphs 9 and 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its Unit employees and the servicing representative of the exclusive collective-bargaining representative of the Unit in violation of Section 8(a)(1) and (5) of the Act.

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

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from engaging in the conduct described in paragraphs 9 and 10, or in any like or related manner failing or refusing to bargain collectively and in good faith with Charging Party SPFPA as the exclusive collective-bargaining representative of the Unit and Charging Party Local 120 as the servicing representative of the exclusive collective-bargaining representative of the Unit.

2. Take the following affirmative action:

(a) Immediately reinstate Tariq Ali, Shamika DeBerry, Phyllis Johnson, Derrick King, Anthony Mays, Christopher Stanley, and Shurjea Watson to their former positions of employment, or, if those positions are no longer available, to substantially equivalent positions of employment, without prejudice to their seniority rights and privileges they previously enjoyed.

(b) Make whole Tariq Ali, Tony Bradford, Michael Carter, Lisa Crawford, Carlotta Davis, Portia Dean, Shamika DeBerry, D'Andre Haliburton, Albert Hatcher, Desmond Hill, Hakeem IdDeen, Phyllis Johnson, Tamika Kelley, Derrick King, Sadaf Sarnaghi Marzban, Anthony Mays, Lilresa Merchant, Mildred Millikin, Renee Morton, Curtis Mosely, Timothy Murphy, Brenda Peterson, Je'Neece Randle, Millini Rodgers, Deonta Spikes, Jose Spraggins, Christopher Stanley, Precious Strickland, Carlos Swoope, Curron Thomas, Marvin Tolbert, Antonio Vaughn, Shurjea Watson, and Kenneth Wittstock for any loss of earnings or other benefits they suffered by reason of refusal to bargain described in paragraphs 9 and 10, and reimburse them for all search-for-work and work-related expenses incurred, if any, regardless of whether they received interim earnings in excess of those expenses; with interest in accordance with Board policy.

(c) Remove from its files and records all references to any discharges and suspensions issued to employees Tariq Ali, Tony Bradford, Michael Carter, Lisa Crawford, Carlotta Davis, Portia Dean, Shamika DeBerry, D'Andre Haliburton, Albert Hatcher, Desmond Hill, Hakeem IdDeen, Phyllis Johnson, Tamika Kelley, Bryant King, Sadaf Sarnaghi Marzban,

Anthony Mays, Lilresa Merchant, Mildred Millikin, Renee Morton, Curtis Mosely, Timothy Murphy, Brenda Peterson, Je'Neece Randle, Millini Rodgers, Deonta Spikes, Jose Spraggins, Christopher Stanley, Precious Strickland, Carlos Swoope, Curron Thomas, Marvin Tolbert, Antonio Vaughn, Shurjea Watson, and Kenneth Wittstock, described in paragraph 9, notify those employees, individually, in writing, that this has been done and that the discipline will not be used against them in the future in any way.

(d) Upon request from the Charging Party and/or its collective bargaining designate, bargain in good faith with the Charging Party and/or its collective bargaining designate about the disciplines described in paragraph 9.

(e) Upon request, meet and bargain collectively in good faith with the Charging Party SPFPA and/or its collective bargaining designate Charging Party Local 120 of the exclusive collective-bargaining representative of the Unit.

(f) Post appropriate notices.

The General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices herein alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the second consolidated amended complaint. The answer must be **received by this office on or before, November 15, 2019, or postmarked on or before November 14, 2019.** 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.nlrb.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 Section 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 unanswered allegations in the second consolidated amended complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **March 2, 2020, at 11:00 a.m.,** at the **Patrick V. McNamara Federal Building, 477 Michigan Avenue, 5th Floor, Room 05-200, Detroit, Michigan**, 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 second consolidated amended 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: November 1, 2019

Terry Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, MI 48226

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- Special Needs: If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- Pre-hearing Conference: One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- Witnesses and Evidence: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- Exhibits: **Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered**

(OVER)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- Transcripts: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- Oral Argument: You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- Date for Filing Post-Hearing Brief: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- Extension of Time for Filing Brief with the ALJ: If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- ALJ's Decision: In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- Exceptions to the ALJ's Decision: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of July, 2020, a copy of the foregoing was filed electronically. A copy was served via email on (Matt@unionlaw.net), and Patricia.Fedewa@nlrb.gov

/s/ Sheryl L. Laughren

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