

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

COMPUCOM SYSTEMS, INC.

and

Case 22-CA-28969

**COMMUNICATIONS WORKERS
OF AMERICA, LOCAL 1032**

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

This supplemental memorandum is submitted by Counsel for the General Counsel (CGC) in support of the Motion for Summary Judgment that was filed on July 24, 2009. The Motion for Summary Judgment was filed with the charge and pleadings in the above-captioned case and the petition, tally of ballots and rulings that were made in the related representation case.

I. HISTORY OF THE CASE

On May 20, 2008, the Communication workers of America, Local 1032 (the Union) filed a petition in Case 22-RC-12925 seeking to represent a unit of employees then employed by Getronics USA, Inc (Getronics). Compucom Systems, Inc. (Respondent) purchased Getronics on August 20, 2008 and, at all times thereafter, has admitted successorship.

Pursuant to a Stipulated Election Agreement approved on June 6, 2008, an election was conducted on June 27, 2008 in the following bargaining unit (the Unit):

All full-time and regular part-time Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by Respondent at its Florham Park, New Jersey, East Hanover, New Jersey and Suffern, New York facilities, but excluding all office clerical employees, Business Analysts, Project IC Managers, Guards, and Supervisors as defined in the Act.

The tally of ballots reflects 14 ballots cast for the Petitioner, 10 against and 5 challenged ballots. The ballots were challenged by the Petitioner on the ground that the voters are supervisors. The challenges were determinative.

On December 30, 2008, Administrative Law Judge Steven Fish issued a recommended decision sustaining the challenges of two supervisors and rejecting the remaining three challenges. The three rejected challenges were not determinative.

On April 27, 2009, the Board, by a two-member panel, issued a Decision and Certification of Representative that sustained the recommended decision of Judge Fish and certified the Union as the bargaining representative of the Unit.

On June 19, 2009, a charge was filed by the Union in Case 22-CA-28969.

On July 24, 2009, upon that charge, a Complaint was issued. The Complaint alleged that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by refusing to recognize and bargain with the Union as the certified bargaining representative of the Unit. Respondent's Answer to the Complaint merely contested the Board's certification and the legal consequences of its admitted refusal to recognize and bargain with the Union in compliance with certification.

On August 12, 2009, based upon the pleadings, CGC filed a Motion for Summary Judgment. In response, Respondent contested the validity of the Union's certification on the basis that the Board lacked statutory authority to act with two members on April 27, 2009, when it issued the Decision and Certification of

Representative in the underlying representation case. On the same grounds, Respondent contested the Board's authority to act with two members in ruling upon the Motion for Summary Judgment.

On September 30, 2009, the Board issued a Decision and Order granting CGC's Motion for Summary Judgment and rejecting Respondent's arguments with regard to the authority of the Board to act with two members. *Compucom Systems, Inc.*, 354 NLRB No. 87, fn. 1-2. Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement. The Court ordered that the review and enforcement proceedings be held in abeyance. (Exhibit A)

On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that the Board may not act with less than three members. Accordingly, the Board's original Decision and Order was set aside. (Exhibit A)

On August 23, 2010, the Board, by a three-member panel, issued a new Decision, Certification of Representative, and Notice to Show Cause. *Compucom Systems, Inc.*, 355 NLRB No. 112. Therein, the Board adopted the findings and recommendations made by Judge Fish on December 30, 2008 for reasons stated in the Board's April 27, 2009 Decision and Certification of Representative. The Board also set deadlines for the filing of amended pleadings and served notice that cause must be shown, by October 7, 2010, why CGC's Motion for Summary Judgment should not be granted.

III. THE AMENDED PLEADINGS

On September 2, 2010, a First Amended Complaint was issued. (Exhibit B)

On September 15, 2010, Respondent filed an Answer thereto. (Exhibit C)

In its Answer to the Complaint, Respondent admits the filing and service of the charge; the jurisdictional commerce criteria; its successorship of Getronics; that the Union was certified as the collective bargaining representative of the Unit; its refusal to bargain collectively with the Union; and the Union's status as a labor organization within the meaning of Section 2(5) of the Act. Respondent denies only that the Union won the election in Case 22-RC-12925 -- on the ground that all five determinative challenged ballots should have been overruled and counted toward the final election results -- and is the bargaining representative of the Unit. (Ans. Affirmative Def. ¶ 1)

Accordingly, Respondent contends that the Union should not have been certified as the bargaining representative of the Unit and that it has not violated Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union.

IV. NEW DEMAND FOR BARGAINING

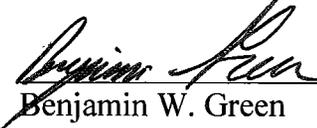
By letter dated September 3, 2010, the Union requested that the parties commence negotiations for a collective bargaining agreement covering Unit employees. (Exhibit D) By letter dated September 21, Respondent has advised the Union that it will contest certification, will refuse to recognize the CWA as the employees' representative and rejects any offers to commence bargaining at this time. (Exhibit E)

V. **CONCLUSION**

Based upon the Amended Pleadings, CGC seeks the remedy requested in its Motion for Summary Judgment and granted by the Board in its original ruling thereon.

Dated at Newark, New Jersey, this 27th day of September, 2010.

Respectfully submitted,



Benjamin W. Green
Counsel for the General Counsel
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
(973) 645-6453

INDEX OF EXHIBITS

<u>Exhibit Letter</u>	<u>Description</u>
A	Order Issued by the Executive Director
B	First Amended Complaint
C	Respondents Answer to the First Amended Complaint
D.	September 3, 2010 Letter Requesting Negotiations
E.	September 21, 2010 Letter Refusing to Bargain

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMPUCOM SYSTEMS, INC.

and

Cases 22-CA-28969

COMMUNICATION WORKERS OF
AMERICA, LOCAL 1032

ORDER

On September 30, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 87.¹ Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement. Thereafter the court ordered that the review and enforcement proceedings be held in abeyance, and the record in these cases was not filed with the court.

On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130

¹Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

EXHIBIT A

S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained.

Accordingly, in view of the Court's decision in *New Process Steel, L.P.*, pursuant to Section 10(d) of the National Labor Relations Act, the Board hereby sets aside the above-referenced Decision and Order.² The Board will retain this case on its docket and take further action as appropriate.

By Direction of the Board:

Lester A. Heltzer
Executive Secretary

² Section 10(d) states "[u]ntil the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it." See also *In re NLRB*, 304 U.S. 486 (1938).

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

COMPUCOM SYSTEMS, INC.

and

Case 22-CA-28969

**COMMUNICATION WORKERS OF
AMERICA, LOCAL 1032**

FIRST AMENDED COMPLAINT

Communication Workers of America, Local 1032, herein called the Union, has charged that CompuCom Systems, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, herein called the Act. Based thereon the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this First Amended Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on June 19, 2009, and a copy was served by certified mail on Respondent on June 19, 2009.
2. At all times material herein, Respondent, a corporation with offices and places of business in East Hanover, Florham Park, New Jersey and Suffern, New York has been engaged in the business of contract computer support services.
3. On or about August 20, 2009, Respondent purchased the business of Getronics USA, Inc., herein called Getronics, and since then has continued to operate the business of Getronics

EXHIBIT B

in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Gentronics.

4. Based on the operations described above in paragraphs 2 and 3, Respondent has continued the employing entity and is a successor to Gentronics.

5. During the preceding twelve-month period, Respondent, in conducting its business operations described above in paragraphs 2 and 3, purchased and received at its New Jersey facilities goods valued in excess of \$50,000 directly from points outside of the State of New Jersey.

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

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

8. The following employees of Respondent, herein called 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 Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by Respondent at its Florham Park and East Hanover, New Jersey and Suffern, New York facilities, but excluding all office clerical employees, Business Analyst, Project IC Managers, guards, and supervisors, as defined in the Act.

9. On August 23, 2010, the Union was certified as the exclusive collective-bargaining representative of the Unit.

10. At all times since August 23, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

11. On or about May 19, 2009, by letter, the Union requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

12. Since about June 15, 2009, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective bargaining representative of the Unit.

13. By the conduct described above in paragraph 12, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

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

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 complaint. The answer must be **received by this office on or before Thursday, September 16, 2010, or postmarked on or before Wednesday, September 15, 2010.** Unless filed electronically in a pdf format, 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 by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. 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 parties if not represented. See Sections 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs 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 be submitted to the Regional Office by traditional means within three (3) business days after the dated of electronic filing.

Service of the answer on each of the other parties must still be accomplished in conformance with the requirement of Section 102.114 of 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 of the complaint are true.

Issued at Newark, New Jersey, this 2nd day of September, 2010.



Maria E. Balzano
Acting Regional Director
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102

Attachments

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 22**

COMPUCOM SYSTEMS, INC.

and

**COMMUNICATION WORKERS
OF AMERICA, LOCAL 1032**

§
§
§
§
§
§

Case No. 22-CA-28969

**COMPUCOM SYSTEMS, INC.'S ANSWER TO THE FIRST AMENDED
COMPLAINT**

Respondent CompuCom Systems, Inc. ("CompuCom" or "Respondent") files this Answer to the First Amended Complaint and states as follows:

I.

RESPONSES TO NUMBERED PARAGRAPHS IN COMPLAINT

Respondent denies all of the substantive allegations set forth in the introductory paragraph of the First Amended Complaint ("Complaint").

1. Respondent admits the allegations in Paragraph 1 of the Complaint.
2. Respondent admits that it is a Delaware corporation which maintains its corporate offices in Dallas, Texas. Respondent also admits that it provides information technology ("IT") related services to business customers throughout the United States, including the installation, maintenance and support of customers' IT infrastructure. Respondent also admits that it conducts business in East Hanover and Florham Park, New Jersey and Suffern, New York. Respondent denies the remaining allegations in Paragraph 2 of the Complaint.

3. Respondent admits that on or about August 20, 2008, it purchased the business of Getronics USA, Inc. (hereinafter "Getronics"), and since then has continued to operate the business of Getronics in basically unchanged form, and has employed a majority of the individuals who were previously employees at Getronics. Respondent denies the remaining allegations in Paragraph 3 of the Complaint.

4. Respondent admits that it is a successor to Getronics. Respondent denies the remaining allegations in Paragraph 4 of the Complaint.

5. Respondent admits that during the preceding 12-month period, Respondent has purchased and received at its New Jersey facilities goods valued in excess of \$50,000 directly from points outside of the State of New Jersey. Respondent denies the remaining allegations in Paragraph 5 of the Complaint.

6. Respondent admits the allegations in Paragraph 6 of the Complaint.

7. Respondent admits the allegations in Paragraph 7 of the Complaint.

8. Respondent admits the allegations in Paragraph 8 of the Complaint.

9. Respondent admits that on August 23, 2010, the National Labor Relations Board (the "Board") issued a Decision and Certification of Representative, certifying the Communications Workers of America, Local 1032 ("the Union") as the exclusive collective bargaining representative of the unit, but Respondent contests the Decision and Certification and denies that the Union is the bargaining representative of the unit.

10. Respondent denies the allegations in Paragraph 10 of the Complaint.

11. Respondent admits that on or about May 19, 2009, the Union requested that negotiations commence for a collective bargaining agreement. Respondent denies the remaining allegations in Paragraph 11 of the Complaint.

12. Respondent admits that since about June 15, 2009, it has failed and refused to bargain with the Union because Respondent denies that the Union is the exclusive collective bargaining representative of the unit.

13. Respondent denies the allegations in Paragraph 13 of the Complaint.

14. Respondent denies the allegations in Paragraph 14 of the Complaint.

II.

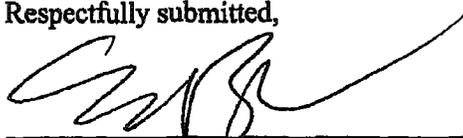
ADDITIONAL DEFENSES

1. Subject to and without waiving the foregoing, and in the alternative if necessary, Robert Mikol ("Mikol") and John Paynter ("Paynter") are not "supervisors" as defined by Section 2(11) of the National Labor Relations Act (the "Act"), and therefore, the five ballots which were challenged during the representation election underlying this Complaint should be opened and counted.

2. Subject to and without waiving the foregoing, and in the alternative if necessary, Respondent submits that a majority of the alleged bargaining unit employees do not wish to have the Union serve as their exclusive collective bargaining representative.

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully requests that the Complaint be dismissed in its entirety.

Respectfully submitted,



Steven L. Rahhal
State Bar No. 16473990
Edward F. Berbarie
Texas Bar No. 24045483

LITTLER MENDELSON
A PROFESSIONAL CORPORATION
2001 Ross Avenue
Suite 1500, Lock Box 116
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(214) 880-8100 (Telephone)
(214) 880-0181 (Telecopier)
srahhall@littler.com
eberbarie@littler.com

ATTORNEYS FOR RESPONDENT

STATEMENT OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on the following parties via email on this 15th day of September, 2010:

Maria Blazano
Acting Regional Director
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
Maria.blazano@nlrb.gov

Benjamin W. Green
Counsel for the General Counsel
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Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
Benjamin.green@nlrb.gov

David A. Tango, Esq.
Weissman & Mintz
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dtango@weissmanmintz.com



Edward F. Berbarie



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WORKERS OF AMERICA
A.F.L. - C.I.O.

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Newark, NJ 07105
Ph: (973) 589-1544
Fax: (973) 589-5904

September 3, 2010

Pat Llewellyn
Novartis Pharmaceuticals Getronics/CompuCom
Bldg. 431 Room 2530-D
1 Health Plaza
East Hanover, NJ 07936

Dear Mr. Llewellyn,

This letter shall serve as notification that the Communications Workers of America Local 1032 representing all Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analysts at CompuCom requests to commence negotiations for a collective bargaining agreement for the affected employees.

In order for us to prepare sound contract proposals for negotiations with your company, please provide:

For each individual current employec:

1. Date of hire
2. Hourly ratc of pay
3. Job classification
4. Normal work schedule
5. Normal work location
6. Normal hours worked per week

For employees as a group

1. A list of all supplemental benefits provided to employees including vacation allowance, sick leave, paid holidays, health, life, accident or other types of insurance, jury duty leave, birthday leave, medical check-up, welfare, retirement and non-occupational disability benefits. Please provide an explanation for each benefit and where possible, a copy of the plan document.

EXHIBIT D

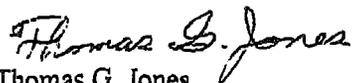


May 19, 2009
Pat Llewellyn
Page 2

2. The average per hour cost figure for each supplemental benefit provided to employees.

I can be reached at my office in Newton, NJ at 973-579-7539 if there are any questions. Thank you for your attention and courtesies.

Sincerely,


Thomas G. Jones
Staff Representative

Cc: Patrick Kavanagh, CWA Local 1032 President
Ben Green, NLRB
David Tango, Esq. Weissman&Mintz
M. Santiago, CWA Local 1032 Staff



Littler Mendelson, P.C.
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, TX 75201-2931

September 21, 2010

Steven L. Rahhal
214.880.8108 direct
214.880.8100 main
srahhal@littler.com

VIA U.S. MAIL AND FACSIMILE 973.579.5649

Thomas G. Jones
CWA Local 1032
61 Spring Street
Newton, NJ 07860

Re: Your letter dated September 3, 2010/Request for Information

Dear Mr. Jones:

As you may know, this firm currently represents CompuCom in relation to this matter. At this time, the Company does not believe that the Communications Workers of America, Local 1032 ("CWA"), represents an uncoerced majority of the CompuCom employees at the Novartis site (the "employees"), and it will be contesting certification. Accordingly, CompuCom refuses to recognize the CWA as the employees' representative and rejects your request for information and any offers to commence bargaining at this time.

Please direct all future correspondence regarding this matter to me or Eddie Berbarie at the following address:

Steven L. Rahhal
Edward F. Berbarie
Littler Mendelson, P.C.
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, Texas 75201
Telephone: 214.880-8100
Facsimile: 214.880.0181

Direct Telephone: 214.880.8108
Direct Telephone: 214.880.8120

Thank you.

Sincerely,

Steven L. Rahhal

SLR:mr

Exhibit E