UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STAR WEST SATELLITE, INC.

and

Cases 19-CA-32870
19-CA-32911

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 206 affiliated with
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO

COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

Counsel for the Acting General Counsel submits this Opposition to Respondent's March 17, 2011, Motion to Dismiss, or in the alternative, Motion for Summary Judgment ("Respondent's Motion"), and respectfully requests that Respondent's Motion be denied in its entirety for the following reasons. First, this case is not appropriate for summary judgment/dismissal. Second, this case is improperly filed with the Board. Finally, even if Respondent's Motion were appropriately before the Board, the Consolidated Complaint allegations Respondent takes issue with clearly conform to the requisite pleading standards.

A. This Case is not Appropriate for Dismissal and/or Summary Judgment

Dismissal is appropriate if the complaint has failed to state a claim upon which relief can be granted. *See Children's Receiving Home of Sacramento,* 248 NLRB 308 (1980) (the test is whether the complaint allegations, if true, set forth a violation of the Act). Such is not and cannot be asserted to be the case here. Rather, what Respondent objects to is the manner in which the claim is stated, not the basis for the

claim. As such, dismissal is inappropriate. Further, as discussed below, even Respondent's challenge to the method of pleading is flawed.

It is well-settled that, for summary judgment to be appropriate, there can be no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Conoco Chemical Co.,* 275 NLRB 39, 40 (1985), *citing Stephens College,* 260 NLRB 1049, 1050 (1982). Based on its own Answer contesting various allegations, Respondent fails to meet this standard. Indeed, as Respondent's Answer asserts, there are clearly genuine issues of material facts in dispute making summary judgment wholly inappropriate at this time.

B. Respondent's Motion is Improperly Filed with the Board

Respondent's challenge is to the specificity of certain Consolidated Complaint allegations. As such, Respondent effectively requests a bill of particulars. Respondent's framing such a challenge as a motion for summary judgment/dismissal is nothing more than a veiled attempt to circumvent established Board processes, as requests for bills of particulars are not properly filed with the Board. Rather, they are trial matters and, thus, must be filed with the Division of Judges in accordance with the Board's Rules and Regulations. *See* § 102.24 of the Rules and Regulations of the National Labor Relations Board ("Rules and Regulations").

Regardless of Respondent's disingenuous claims, as discussed in more detail below, a Board complaint, to be valid, requires only a plain statement of the facts claimed to have constituted an unfair labor practice. A bill of particulars is only justified when the complaint is so vague that respondent is unable to meet the General Counsel's case. *See North American Rockwell Corp. v. NLRB,* 389 F.2d 866, 871 (10th

Cir. 1968), *enf'g*, *North American Aviation Inc.*, 163 NLRB 863 (1967). Such is clearly not the case here.

C. The Consolidated Complaint Fully Satisfies the Board's Standards

The Board's standard for adequacy of complaint allegations is set forth in the Rules and Regulations, which state, in relevant part, that the "complaint shall contain ... a clear and concise description of the acts which are claimed to constitute unfair labor practices, including where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." Board's Rules and Regulations § 102.15. The Board only requires that "there be a plain statement of the things claimed to constitute an unfair labor practice" so that a respondent can be put on notice of the claim upon which a relief is sought. *American Newspaper Publishers Assn. v. NLRB,* 193 F.2d 782, 800 (3d. Cir. 1951), *aff'd.*, 345 U.S. 100 (1953).

Stated differently, a complaint meets the Board's standards when it provides a general description of conduct alleged to be an unfair labor practice and gives the date and name of respondent's agents alleged to have engaged in the act. *Dal-Tex Optical Co.*, 130 NLRB 1313, 1315 (1961). The General Counsel is *not* required to plead specific factual evidence or a theory of a violation in the case. *Fluor Corp.*, 123 NLRB 1877, 1913 (1959). Nor is the General Counsel required to plead the names of employees to whom the alleged § 8(a)(1) violations were directed. *Walsh-Lumpkin Wholesale Drug Co.,* 129 NLRB 294, 295 (1960) (respondent is not entitled to disclosure of the names of employees to whom the alleged § 8(a)(1) violations were directed until trial).

Respondent takes issue with Paragraphs 5, 6, 7 and 8(b), (c), and (g) of the Consolidated Complaint. Each is addressed in turn.

Paragraph 5 of the Consolidated Complaint alleges that "on about December 3, 2010, ... Respondent, by Sifford at a jobsite near Nampa, Idaho, created an impression among its employees that their union activities were under surveillance by Respondent." This pleading puts Respondent on notice of the date upon which the allegation occurred, the agent alleged to have committed the violation, the location of the alleged conduct, and a "clear and concise description of the acts which are claimed to constitute unfair labor practices." As such, it clearly conforms to the Board's pleading standards as set forth in § 102.15 of the Board's Rules and Regulations.

To the extent Respondent argues the pleading lacks specificity because it cannot ascertain the Acting General Counsel's evidence concerning the specifics underpinning the conduct itself or the identity of the employees involved, the Acting General Counsel is not required to plead the specific evidence in support of his allegation or identify the employees to whom Sifford allegedly made these comments prior to the hearing. *See Fluor Corp.*, 123 NLRB at 1913; *Walsh-Lumpkin Wholesale Drug Co.,* 129 NLRB at 295. Moreover, insofar as preparation of its defense, Respondent has access to the agent alleged to have engaged in the conduct, and is in the best position to ascertain any details of Sifford's visit to the jobsite near Nampa on December 3rd.

Paragraphs 6(a), (b), and (c) of the Consolidated Complaint allege that on specific dates and at specific locations, various identified and named agents of Respondent "interrogated employees about their union sympathies." Again, these allegations provide Respondent with clear notice of who allegedly interrogated

employees about their union sympathies, as well as where and when those interrogations are alleged to have taken place. The Board has long held that a complaint containing a generalized allegation of interrogation/threats that sets forth the date of the occurrence along with the identity of the offending respondent agent, is sufficient to place the respondent on notice of the claims upon which relief is sought. *See Salon/Spa at Boro, Inc.,* 356 NLRB No. 69, n.39 (2010) (complaint allegation sufficient; it provided the name of the agent who committed the alleged offense, the date, and the generalized nature of the activity), *citing Dal-Tex Optical Co.,* 130 NLRB 1313 (1961). As such, Paragraph 6, in its entirety, clearly conforms to § 102.15 of the Board's Rules and Regulations.

Likewise, Paragraphs 7(a) and (b) allege that Respondent, by identified named agents, solicited complaints and grievances from its employees on specific dates and at specific locations. As elucidated above, the Acting General Counsel is required only to provide a generalized description of the things claimed to constitute an unfair labor practice; he is *not* required to plead specific facts or his legal theory of a violation. *See Fluor Corp.*, 123 NLRB at 1913. Accordingly, Paragraph 7, in its entirety, clearly satisfies the Board's Rules and Regulations.

Paragraph 8(b) alleges that "on November 21, 2010, Respondent, by letter to its employees from Sobrepena, threatened to take away certain benefits if employees voted for the Union." This Paragraph provides Respondent with clear notice of the alleged unfair labor practice being alleged – the threat in its November 21, 2010, letter to employees to take away existing benefits if employees vote for the Union. Thus, not only does Respondent have clear notice of the alleged violation, it has the evidence

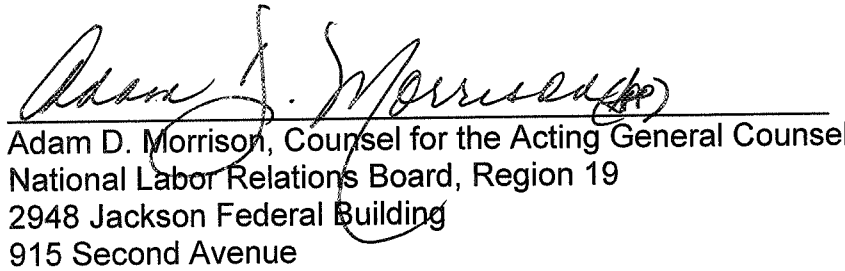
itself. Respondent's assertion regarding the lack of specificity as to this particular paragraph is particularly baseless given that Respondent is the author of the one-page letter at issue.

Finally, Paragraphs 8(c) and (g) provide Respondent with notice that on specific dates and at specific places, certain identified agents of Respondent allegedly threatened to take away benefits if employees voted for the Union. Again, the Acting General Counsel is not required to plead specific facts relied upon for this allegation or plead his specific legal theory as to why this is a violation; a generalized allegation of interrogation/threats that sets forth the date of the occurrence along with the identify of the offending respondent agent is sufficient to place the respondent on notice of the claims upon which relief is sought. *See Salon/Spa at Boro, Inc.,* 356 NLRB at n.39; *Fluor Corp.*, 123 NLRB at 1913. As such, the entirety of Paragraph 8 meets the Board's standards.

D. Conclusion

For the reasons stated above, Counsel for the Acting General Counsel respectfully requests that Respondent's Motion be denied in its entirety.

Respectfully submitted this 21st day of March, 2011.



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CERTIFICATE OF SERVICE

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