

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

International Union of Operating Engineers,)		
Local 399, AFL-CIO, <i>et al.</i> ,))	
)	
Plaintiffs,))	Case No. 16-cv-2395
)	
v.))	Judge Matthew F. Kennelly
)	Magistrate Judge Susan E. Cox
Village of Lincolnshire, Illinois, <i>et al.</i> ,))	
)	
Defendants.))	

**PLAINTIFF UNIONS’ RULE 56.1(b)(3)(B) RESPONSE TO
DEFENDANTS’ STATEMENT OF FACTS**

Plaintiffs International Union of Operating Engineers, Local 399, AFL-CIO, *et al.* (“the Unions”), file this statement pursuant to Local Rule 56.1(b)(3)(A) in response to Defendants Village of Lincolnshire, Illinois, *et al.*, Statement of Facts; and pursuant to Local Rule 56.1(b)(3)(B) its Statement of Additional Facts:

THE PARTIES

1. Defendant Village of Lincolnshire, Illinois (the “Village”), is a municipal corporation, political subdivision, and Home Rule unit of government by referendum pursuant to the provisions of Article VII, Section 6, of the 1970 Constitution of the State of Illinois (Plfs.’ Tab 1, Certified Ordinance; Complaint/Answer ¶ 15, Doc. #28 at PageID #50).

RESPONSE: The Unions admit the facts stated in Paragraph 1.

2. Defendant Peter Kinsey is the Chief of Police of the Village (Complaint/Answer ¶ 16, Doc. #28 at PageID #51).

RESPONSE: The Unions admit the facts stated in Paragraph 2.

3. Defendant Elizabeth Brandt is the Mayor of Lincolnshire (Complaint/Answer ¶ 17, Doc. #28 at PageID #51).

RESPONSE: The Unions admit the facts stated in Paragraph 3.

4. Defendant Barbara Mastandrea is the Village Clerk of Lincolnshire (Complaint/Answer ¶ 18, Doc. #28 at PageID #51).

RESPONSE: The Unions admit the facts stated in Paragraph 4.

5. Plaintiff International Union of Operating Engineers, Local 399, AFL-CIO is a “labor organization” within the meaning of both the NLRA and the Ordinance (Complaint/Answer ¶ 5, doc. #28, PageID #48-49).

RESPONSE: The Unions admit the facts stated in Paragraph 5.

6. Plaintiff International Union of Operating Engineers, Local 150, AFL-CIO is a “labor organization” within the meaning of both the NLRA and the Ordinance (Complaint/Answer ¶ 5, doc. #28, PageID #49).

RESPONSE: The Unions admit the facts stated in Paragraph 6.

7. Plaintiff Construction and General Laborers’ District Council of Chicago and Vicinity, Laborers’ International Union of North America, AFL-CIO is a “labor organization” within the meaning of both the NLRA and the Ordinance (Complaint/Answer ¶ 9, Doc. #28 at PageID #49-50).

RESPONSE: The Unions admit the facts stated in Paragraph 7.

8. Plaintiff Chicago Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America is a “labor organization” within the meaning of both the NLRA and the Ordinance (Complaint/Answer ¶ 12, Doc. #28 at PageID 50).

RESPONSE: The Unions admit the facts stated in Paragraph 8.

VENUE AND JURISDICTION

9. Plaintiffs purport to bring this suit pursuant to 42 U.S.C. § 1983 and the Supremacy Clause of the United States Constitution. (Complaint/Answer ¶ 1, Doc. #28 at Page ID 47-48).

RESPONSE: The Unions admit the facts stated in Paragraph 9.

10. The events giving rise to Plaintiffs’ claims occurred in Lincolnshire. (Complaint/Answer ¶ 3, Doc. #28 at PageID 48).

RESPONSE: The Unions admit the facts stated in Paragraph 10.

ADDITIONAL FACTS

11. On December 14, 2015, the Village's Board of Trustees enacted, and the Mayor approved, Ordinance Number 15-3389-116, which had the stated intent "to protect individual choice and worker freedoms such that in the Village of Lincolnshire, no employee covered by the National Labor Relations Act ("NLRA") shall be compelled to join or pay dues to a union, or refrain from joining a union, as a condition of employment; and provide certain penalties for violation of those employment rights." (Plfs.' Tab 1, Certified Ordinance).

RESPONSE: The Unions admit the facts stated in Paragraph 11.

12. The Ordinance states that the "Mayor and Council of the Village of Lincolnshire find that fostering a commercially competitive environment to maintain a stable, diverse tax base in the Village and the promotion of job growth for the Village's residents pertain to the government and affairs of the Village of Lincolnshire." (Plfs.' Tab 1, Certified Ordinance).

RESPONSE: The Unions admit the facts stated in Paragraph 12.

13. The Ordinance states that "the Mayor and Council of the Village of Lincolnshire hereby find and determine that it is in the best interest of the public health safety and welfare of the residents of the Village of Lincolnshire to promote and encourage direct labor commerce by giving employees the freedom to choose employment without restraint or coercion regarding the payment of mandatory dues, fees or other payments to a labor organization as a condition of that employment." (Plfs.' Tab 1, Certified Ordinance).

RESPONSE: The Unions admit the facts stated in Paragraph 13.

14. Section 4 of the Ordinance, (Plfs.' Tab 1), provides in full:

SECTION 4: GUARANTEE OF EMPLOYEE RIGHTS

No person covered by the NLRA shall be required as a condition of employment or continuation of employment with a private-sector employer:

- (A) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
- (B) to become or remain a member of a labor organization;
- (C) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;
- (D) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or
- (E) to be recommended, approved, referred, or cleared for employment by or through a labor organization.

RESPONSE: The Unions admit the facts stated in Paragraph 14.

15. Section 5 of the Ordinance, (Plfs.' Tab 1), provides in full:

SECTION 5: VOLUNTARY DEDUCTIONS PROTECTED

For employers located in the Village, it shall be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer.

RESPONSE: The Unions admit the facts stated in Paragraph 15.

16. Section 6 of the Ordinance, (Plfs.' Tab 1), provides in full:

SECTION 6: IMPLIED AGREEMENTS PROHIBITED

Any agreement, understanding, or practice, written or oral, implied or expressed, between any labor organization and employer that violates the rights[sic] of employees as guaranteed by provisions of this Ordinance is hereby declared to be unlawful, null and void, and of no legal effect.

RESPONSE: The Unions admit the facts stated in Paragraph 16.

17. The Ordinance applies to all collective bargaining agreements and employment agreements entered into after the effective date of the Ordinance by employers, employees and/or labor organizations covering non-governmental employees in Lincolnshire. The Ordinance also applies to any renewal or extension of existing collective bargaining agreements and employment agreements covering non-governmental employees within Lincolnshire made after the effective date of the Ordinance. (Plfs.' Tab 1, Certified Ordinance, § 10.)

RESPONSE: The Unions admit the facts stated in Paragraph 17.

Plaintiffs' Rule 56.1(b)(3)(C) Statement of Additional Facts

Pursuant to Local Rule 56.1(b)(3)(C), Local 150 files this statement of additional facts:

1. Roberto Zavala is a Local 150 member who has worked for Revcon Construction Corp. at its facility in Lincolnshire, Illinois, since he was first dispatched there by the Union in 2002 (Tab 10, Certification of Roberto Zavala dated July 29, 2016, "Zavala Cert.," ¶¶ 1-2). Zavala reports daily to the Revcon Lincolnshire facility where he works as a welder under the Local 150

Illinois Building Agreement with Revcon (Zavala Cert. ¶¶ 3-4). Zavala spends approximately 80 to 90 percent of his work time repairing heavy equipment at the Revcon Lincolnshire shop, and the remainder of his time doing field repairs for Revcon customers (Zavala Cert. ¶ 3). Revcon issues Zavala's paychecks out of its Lincolnshire facility, from which dues are deducted and tendered to Local 150 pursuant to his signed dues deduction authorization form and the dues check-off provision in the MARBA Illinois Building Agreement (Zavala Cert. ¶¶ 3-5; Tab 12, Supplemental Certification of Richard Fahy dated August 4, 2016 "Fahy Supp. Cert.," Ex. A, Union 00145; Cisco Cert. Ex. A, Union 00600-00601). The current version of this Agreement contains a union security clause, dues check-off provision, and hiring hall provision, and is effective June 1, 2010, through May 31, 2017 (Zavala Cert. ¶ 4).

2. Mark Beinlich is a Local 150 member who has worked for Dick's Heavy Equipment Repair at its facility in Lincolnshire, Illinois, since 1974 (Tab 11, Certification of Mark Beinlich dated July 29, 2016, "Beinlich Cert.," ¶¶ 1-2). Beinlich reports daily to the Dick's Heavy Equipment Repair Lincolnshire facility where he works as a mechanic under the Local 150 Collective Bargaining Agreement with Dick's Heavy Equipment Repair (Beinlich Cert. ¶ 3-4). Beinlich spends approximately 50 to 60 percent of his work time repairing heavy equipment at the Dick's Heavy Equipment Repair Lincolnshire shop, and the remainder of his time doing field repairs for Dick's Heavy Equipment Repair customers (Beinlich Cert. ¶ 3). Dick's Heavy Equipment Repair issues Beinlich's paychecks out of its Lincolnshire facility, from which dues are deducted and tendered to Local 150 pursuant to his signed dues deduction authorization form and the dues check-off provision in the Collective Bargaining Agreement (Beinlich Cert. ¶¶ 3-5; Fahy Supp. Cert. Ex. A, Union 00110; Cisco Cert. Ex. A, Union 00103-00104).

3. On August 3, 2016, Local 150 Business Representative Richard Fahy visited the Revcon, Central Boring, D.C.S., and Dick's Heavy Equipment Repair facilities in Lincolnshire, Illinois (Fahy Supp. Cert. ¶ 10). Fahy found the operations of these facilities essentially unchanged from when he worked there several years ago (*id.*). Fahy observed many employees of all four companies known to him to be Local 150 members working there repairing, maintaining, and hauling heavy equipment, including specifically Roberto Zavala, a Revcon coworker (*id.*).

4. On August 3, 2016, Fahy reviewed Local 150 records related to the dispatch of 33 employees to Revcon jobsites throughout the Chicagoland area from November 2015 through August 2016, including one member, Jeff Rivera, who was dispatched to work out of Revcon's facility in Lincolnshire, Illinois (Fahy Supp. Cert. ¶¶ 11-12 and Ex. A, Union 02596-02597). Fahy further reviewed records which show that pursuant to authorizations from those employees, Revcon, Central Boring, D.C.S., and Dick's have deducted dues from the paychecks of those employees and remitted them to Local 150 through at least April 2016 (*id.*).

5. On August 9, 2016, Local 150 Recording-Correspondence Secretary Steven M. Cisco certified that, based on his review of Local 150 District 3 dispatch records, reports from Local 150 District 3 Business Agents, and his review of the list of contractors produced by Lincolnshire who perform construction-related work for Lincolnshire, Local 150 continues to routinely dispatch employees to construction projects located in the Village of Lincolnshire and that employees have been dispatched to construction projects located in the Village of Lincolnshire over the past several months (Tab 13, Supplemental Certification of Steven M. Cisco dated August 11, 2016, "Cisco Supp. Cert.," ¶ 50, and Exhibits B, C, D).

6. For example, on March 21, 2016, Local 150 dispatched Brian Holimon to a Rajon Construction, Inc., project located at 920 Milwaukee Avenue in Lincolnshire, Illinois (Cisco Supp.

Cert., Ex. D, Union 2527).

7. Further, as part of Local 150's investigation into the facts involved in this lawsuit, Local 150 sent several requests to Lincolnshire seeking information pursuant to the Illinois Freedom of Information Act (Cisco Cert. ¶ 46, Ex. B). One of these requests was a list of construction-related projects contracted by Lincolnshire during the past 24 months (*id.*). After reviewing the list of contractors produced by Lincolnshire who performed construction-related work for Lincolnshire, Local 150 identified approximately 28 contractor employers who have existing collective bargaining relationships with Local 150 (Cisco Cert. ¶ 47, Ex. B). These employers are: A-Lamp Concrete Contractors; All-Star Asphalt, Inc.; American Underground Engineers; Arrow Road Construction; Peter Baker & Son Co.; Benson Electric; Berger Excavating Co.; Copenhaver Construction; Chicagoland Paving; City Construction; City of Highland Park; F.E. Moran, Inc.; Glenbrook Excavating; Green Acres Landscaping; Hoerr Construction; Insituform Midwest; J.A. Johnson Paving; Konematic; Kellenberger Plumbing, Inc.; Kujo, Inc.; Lake County Public Works; Lake County Grading Co.; McGinty Brothers; M.C. Sport Systems, Inc.; Muellermist Irrigation; Okeh Electric Company; Schroeder & Schroeder Concrete; and, Wallace Paving (*id.*). Of these, 25 companies have agreements with Local 150 which contain hiring hall provisions (Cisco Supp. Cert. ¶ 50).

Dated: August 11, 2016

Respectfully submitted,

By: /s/ Harold Craig Becker
Counsel for all Plaintiffs
Harold Craig Becker
James B. Coppess
Matthew Ginsburg
815 16th St., N.W.
Washington, D.C. 20016
Ph. 202/637-5310
cbecker@aficio.org
jcoppess@aficio.org

By: /s/ William A. Widmer, III
Counsel for Operating Engineers Local 399
William A. Widmer, III
Carmell, Charone, Widmer, Moss & Barr
One East Wacker Drive, Suite 3300
Chicago, IL 60601
Ph. 312/236-8033
wwidmer@carmellcharone.com

mginsburg@aflcio.org

By: /s/ Jon Rosenblatt
Counsel for Laborers District Council
Jon Rosenblatt
G & R Public Law and Strategies
20 South Clark Street, Suite 1620
Chicago, IL 60603
Ph. 312/508-5589
rosenblatt@grpls.com

By: /s/ Dale D. Pierson
Counsel for Operating Engineers Local 150
Dale D. Pierson
Robert A. Paszta
Kenneth E. Edwards
Local 150 Legal Department
6140 Joliet Road
Countryside, IL 60525
Ph. 579-6663
dpierson@local150.org
rpaszta@local150.org
kedwards@local150.org

By: /s/ Terrance B. McGann
Counsel for Carpenters Regional Council
Terrance B. McGann
Gregory N. Freerksen
Whitfield, McGann & Ketterman
111 East Wacker Drive, Suite 2600
Chicago, IL 60601
Ph. 312/251-9700
tmcgann@wmklaborlaw.com
gfreerksen@wmklaborlaw.com

CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on August 11, 2016, he electronically filed the foregoing ***Plaintiffs' Rule 56.1(b)(3)(B) Response to Defendants' Statement of Facts*** with the Clerk of Court using the CM/CM/ECF system, which sent notification to the following:

Jacob H. Huebert (*jhuebert@libertyjusticecenter.org*)
Jeffrey M. Schwab (*jschwab@libertyjusticecenter.org*)
James J. McQuaid (*jmcquaid@libertyjusticecenter.org*)
Liberty Justice Center
190 South LaSalle Street, Suite 1500
Chicago, IL 60603
Ph. 312/263-7668

By: /s/ Dale D. Pierson
One of the Attorneys for Plaintiff Local 150

Dale D. Pierson (*dpierson@local150.org*)
Robert A. Paszta (*rpaszta@local150.org*)
Kenneth E. Edwards (*kedwards@local150.org*)
Local 150 Legal Department
6140 Joliet Road
Countryside, IL 60525
Ph. 708/579-6663
Fx. 708/588-1647