

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

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 399, AFL-CIO, et al.,)	
)	
Plaintiffs,)	Case No. 16-cv-2395
)	
v.)	Judge Matthew F. Kennelly
)	
VILLAGE OF LINCOLNSHIRE, ILLINOIS, et al.,)	
)	
Defendants.)	
)	

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’
RULE 56.1(b)(3)(C) 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).

RESPONSE: Objection. Roberto Zavala’s certification includes information that Defendants specifically requested during discovery, which Plaintiffs refused to provide. In Interrogatory No. 4 of Defendants’ First Set of Interrogatories to Plaintiff Local 150, Defendants requested that Plaintiffs “[i]dentify every individual represented by IUOE local 150 who is currently performing, or has recently performed, work in Lincolnshire,” and include in their answer “the number of hours each individual has spent performing work in Lincolnshire . . . from January

2015 through the present; the number of hours each individual has spent performing work . . . outside of Lincolnshire in each month from January 2015 to the present; the number of hours each individual is expected to perform work in Lincolnshire . . . for each month for the remainder of 2016 and 2017; [and] the number of hours each individual is expected to work . . . outside of Lincolnshire for each month for the remainder of 2016 and 2017.” (See Local 150’s Answers to Defs.’ First Set of Interrogatories at 3-4 (attached at Tab 1).) Plaintiff Local 150 objected to this interrogatory on the grounds that it sought information “that is cumulative, irrelevant, and unduly burdensome. . . . Local 150 has identified employees who regularly work in Lincolnshire on a daily basis subject to current union security, dues check-off and hiring hall provisions. The additional information sought by the Defendant [sic] is cumulative and overly burdensome.” (*Id.* at 4-5.) In other words, Plaintiff Local 150 refused to provide information regarding the percentage of his work time Zavala or any other Local 150 member spent performing work in Lincolnshire.¹ And because Local 150 refused that provide this information in response to Defendants’ Interrogatory No. 4, it also did not provide the supporting documentation Defendants sought in their document requests. (See Local 150’s Response to Village of Lincolnshire’s First Requests for Production (attached at Tab 2) at 7.) Because a party “should not be permitted to introduce evidence . . . that it refused to produce during discovery,” Defendants object to the submission of any evidence purporting to show that any Local 150 member spends a majority of his or her working hours performing work in Lincolnshire. *Telewizja Polska USA, Inc. v. Echostar Satellite Corp.*, No. 02 C 3293, 2004 U.S. Dist. LEXIS 20845, at *6 (N.D. Ill. Oct. 14, 2004).

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

¹ Local 150 did provide documents (Union 02548-02555) listing Zavala as a Revcon employee, but those documents did not answer the questions posed in the quoted excerpts of Interrogatory 4.

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).

RESPONSE: Objection. The information contained in the Beinlich Certification regarding the amount of time Beinlich spends in Lincolnshire was responsive to Defendants’ Interrogatory 4.

Having refused to produce that information (and supporting documentation) in discovery,

Plaintiffs should not be allowed to rely on it now. *See* Defendants’ Response to Plaintiffs’

Additional Fact 1.

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 those 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.*).

RESPONSE: Objection. The Supplemental Certification of Richard Fahy cites a dispatch history for Revcon, Union 02596-02597. This dispatch history was not previously produced, and no prior version of this dispatch history was produced during discovery. Defendants therefore object to the admission of new evidence that should have been produced in response to

Interrogatory 4. *See* Defendants’ Response to Plaintiffs’ Additional Fact 1.

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.*).

RESPONSE: Objection. The Supplemental Certification of Richard Fahy cites a dispatch history for Revcon, Union 02596-02597. This dispatch history was not previously produced, and no prior version of this dispatch history was produced during discovery. Defendants therefore object to the admission of new evidence that should have been produced in response to Interrogatory 4. *See* Defendants' Response to Plaintiffs' Additional Fact 1.

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 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).

RESPONSE: Objection. The Supplemental Certification of Steven M. Cisco cites a dispatch history for Revcon, Union 02596-02597. This dispatch history was not previously produced, and no prior version of this dispatch history was produced during discovery. Defendants therefore object to the admission of new evidence that should have been produced in response to Interrogatory 4. *See* Defendants' Response to Plaintiffs' Additional Fact 1.

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).

RESPONSE: Defendants admit the facts stated in Paragraph 6.

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).

RESPONSE: Defendants admit the facts stated in Paragraph 7.

Dated: August 18, 2016.

Respectfully submitted,

/s/ Jacob H. Huebert

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CERTIFICATE OF SERVICE

I, Jacob H. Huebert, an attorney, hereby certify that on August 19, 2016, I served Defendants' Response to Plaintiffs' Local Rule 56.1(b)(3)(C) Statement of Additional Facts on Plaintiffs' counsel by filing it through the Court's electronic case filing system.

/s/ Jacob H. Huebert