

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

NATIONAL LABOR RELATIONS BOARD,)	CIV. NO. 11-00290 SOM/BMK
)	
Plaintiff,)	ORDER IMPOSING SANCTIONS
)	AGAINST SHEET METAL WORKERS
vs.)	INTERNAT'L ASSOCIATION, LOCAL
)	293, AND GRANTING NLRB'S
)	REQUEST FOR SANCTIONS AGAINST
SHEET METAL WORKERS INT'L ASSOCIATION, LOCAL 293,)	ARTHUR TOLENTINO AND CHARLES
)	KHIM
Defendant.)	
_____)	

ORDER IMPOSING SANCTIONS AGAINST SHEET METAL WORKERS
INTERNAT'L ASSOCIATION, LOCAL 293, AND GRANTING NLRB'S REQUEST
FOR SANCTIONS AGAINST ARTHUR TOLENTINO AND CHARLES KHIM

This court held a hearing on December 28, 2011, regarding the NLRB's "Notice of Respondents' Noncompliance with Court's October 3, 2011 Contempt Order and Request for Additional Sanctions." For the reasons stated on the record at the December 28 hearing, this court imposes the following sanctions:

1. Sanctions of \$250 per day payable to the United States Treasury and delivered to the Clerk of Court for the United States District Court for the District of Hawaii are imposed against Sheet Metal Workers Internat'l Association, Local 293, for failure to comply with this court's "Order Granting NLRB's Motion for Contempt Sanctions," filed on October 3, 2011. Specifically, the Union failed to permit a meaningful deposition of Arthur Tolentino. While it also failed to produce all subpoenaed documents, it did, on December 28, provide new

information that certain documents in one category do not exist. It also indicated that it had sought clarification from the NLRB with respect to another category. Under those circumstances, the court does not rely on the failure to produce all subpoenaed documents in the present order, although the Union remains required to produce the documents. The sanctions, which were announced in this court's October 3 order and so should come as no surprise, are payable for each day during which noncompliance continues, with the first day for which sanctions must be paid being October 18, 2011, and the last day being the day before a meaningful deposition occurs.

2. Pursuant to Rules 30 and 37 of the Federal Rules of Evidence, sanctions against Arthur Tolentino in his individual capacity and Charles Khim in his individual capacity are imposed jointly and severally for their actions relating to the deposition. Tolentino and Khim are ordered to pay to the NLRB any court reporter fees incurred in connection with the deposition of October 17, 2011, as well as attorney's fees totaling \$4500 (\$150 per hour times 30 hours), reflecting the time spent by NLRB attorneys preparing for and attending the October 17 deposition and preparing briefs and oral argument for and attending the hearing seeking the imposition of sanctions relating to the events of October 17. As an additional ground for imposing the above sanctions against Charles Khim, this court

relies on 28 U.S.C. § 1927, finding that Khim acted with knowledge and more than recklessness in flouting this court's October 3 order, inducing Sheet Metal Workers Internat'l Association, Local 293, to flout that order, and rendering the October 17 deposition tantamount to no deposition at all. To avoid any confusion, the court states that this sanction is intended to make the NLRB whole with respect to the injury it sustained relating to the October 17 deposition, and Tolentino and Khim need not each pay the court reporter's fee and attorney's fees of \$4500, which would result in double recovery by the NLRB. Instead, Tolentino and Khim are both jointly and severally responsible for ensuring that one or both of them reimburses the NLBS for the court reporter's fee and pays a total of \$4500 in attorney's fees.

3. In addition, the court, relying on its inherent power and finding bad faith by both Tolentino and Khim, as more fully set forth at the hearing on December 28, imposes sanctions of \$2500 on Tolentino individually and of \$2500 on Khim individually, to be paid to the United States Treasury and delivered to the Clerk of Court of the United States District Court for the District of Hawaii. To be clear, the court states that each of the two of them is separately sanctioned an additional \$2500 under the court's inherent power. As the court stated at the December 28 hearing, the court recognizes that the

NLRB did not in its Notice of Noncompliance expressly seek sanctions under the court's inherent power, but the court found no prejudice to Tolentino and Khim in its issuance of sanctions under its inherent power given the references to the court's inherent power in the Notice of Noncompliance, this court's earlier statements about that power, and Khim's expectation that sanctions required a finding of bad faith. At the December 28 hearing, no dispute with this finding by the court was expressed, and, although the court thereafter invited further written comment on the issue, none was submitted.

4. No later than December 30, 2011, the parties were to agree on a date for the deposition of Tolentino to occur no later than January 13, 2012. Any documents responsive to the subpoena not yet produced were to be produced by that date. Any objection made during the deposition could not exceed 10 words. Given the unwarranted length of the numerous objections during the October 17 deposition, the court imposed a sanction of \$100 for each word exceeding the 10-word limit. This limit did not apply to instructions to the deponent not to answer a question based on the attorney-client privilege. If the deposition and production have not yet occurred because the parties were waiting for the issuance of the present order, then the discovery shall occur by January 31, 2012, unless otherwise agreed to, and all of the above rulings shall remain in effect.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, January 19, 2012.



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

National Labor Relations Board v. Sheet Metal Workers Int'l Association, Local 293; CIV. NO. 11-00290 SOM/BMK; ORDER IMPOSING SANCTIONS AGAINST SHEET METAL WORKERS INTERNAT'L ASSOCIATION, LOCAL 293, AND GRANTING NLRB'S REQUEST FOR SANCTIONS AGAINST ARTHUR TOLENTINO AND CHARLES KHIM