



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON

SUMMARY DECISION

OAL DKT. NO. LID 07013-14

AGENCY DKT. NO. 14-003

JERSEY SHORE REPORTING, LLC,

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT,**

Respondent.

James T. Prusinowski, Esq., for petitioner (Trimboli and Prusinowski, LLC, attorneys)

T. Raymond B. Kilgore, Auditor 1, for respondent pursuant to N.J.A.C. 1:1-5.4(a)2

Record Closed: April 27, 2015

Decided: April 18, 2018

BEFORE **ELIA A. PELIOS, ALJ:**

STATEMENT OF THE CASE

In this matter, petitioner Jersey Shore Reporting, LLC (Jersey Shore), a court reporting company, appeals a determination by respondent Department of Labor and Workforce Development (DLWD) that the company is liable under the Unemployment Compensation Law (UCL), N.J.S.A. 43:21-1 to -24.30, for unemployment compensation and temporary disability contributions attributable to court reporters who provided legal

transcription services for the company in 2008, 2009, and 2010, because the court reporters were employees, and not independent contractors.

PROCEDURAL HISTORY

In 2011, DLWD, which is responsible for the administration of the UCL, audited Jersey Shore, and determined that the court reporters whom the company engaged in 2008, 2009, and 2010, were employees of the company, and not independent contractors. On August 8, 2013, DLWD notified Jersey Shore that the company failed to make unemployment compensation and temporary disability contributions on behalf of the court reporters, and assessed contributions in the amount of \$10,992.05 for 2008, \$13,574.59 for 2009, and \$14,669.42 for 2010, with penalties and interest. Jersey Shore subsequently appealed and, on June 6, 2014, DLWD transmitted the matter to the Office of Administrative Law (OAL) as a contested case.

On January 26, 2015, Jersey Shore filed a motion for summary decision finding that the company is not liable for unemployment compensation and temporary disability contributions for the services provided by the court reporters in 2008, 2009, and 2010. On March 23, 2015, DLWD filed a brief in opposition to Jersey Shore's motion. Jersey Shore filed a reply brief on April 10, 2015 and oral argument was held April 27, 2015.

FACTUAL DISCUSSION

Jersey Shore is a registered court reporting agency that provides legal transcription services to attorneys, courts, and public agencies. Certification of Eugene E. Ertle, Jr., ¶ 2. In bringing the herein motion, Jersey Shore argues that the company is not liable for contributions under the UCL for 2008 and 2009 because the court reporters whom the company engaged were independent contractors, not employees, under both a "common law test" for independence and N.J.S.A. 43:21-19(i)(6(A)(B)(C), otherwise known as the ABC test. The company also argues that it is not liable for contributions for 2010 because, in that year, the Legislature amended the UCL to specifically exempt court reporters from coverage under the law, pursuant to N.J.S.A. 43:21-19(i)(10).

In opposing the herein motion, DLWD argues that for 2010 Jersey Shore cannot avail itself of the exemption provided to court reporters under N.J.S.A. 43:21-19(i)(10). According to DLWD, “[p]ursuant to N.J.S.A. 43:21-19(i)(1)(G) Jersey Shore is not entitled to receive an exemption from the payment of unemployment taxes under . . . N.J.S.A. 43:21-19(i)(10) . . . because it does not hold a corresponding exemption under the Federal Unemployment Tax Act (FUTA).” Second, DLWD argues that the court reporters whom Jersey Shore engages are not independent contractors under the ABC test, and are, thus, employees covered by the UCL.

In support of its contention that the court reporters at issue were, at all relevant times, independent contractors, Jersey Shore has provided a certification from its owner, Eugene E. Ertle, Jr. (Ertle). According to Ertle, Jersey Shore maintains a list of roughly thirty certified court reporters and assigns them to cover a court reporting project on an as-needed basis. Ertle Cert., ¶¶ 3, 10, 13. The court reporters may work for several different court reporting agencies at any given time and may accept or reject any assignment Jersey Shore offers them. Id. at ¶ 4. Once a reporter accepts a job, Ertle gives him or her the date, time, and location of the job. Id. at ¶ 14. The reporters are responsible for their own equipment, travel, and other job-related expenses. Id. at ¶ 11. Once a reporter transcribes a proceeding, he or she gives the transcript to Jersey Shore for delivery to the client and invoicing. Id. at ¶ 14. Jersey Shore handles all billing procedures for reporters. Id. at ¶ 17.

Regarding payment, Ertle certified that if a reporter attends a proceeding, but no testimony is taken, or testimony is taken but no transcript is ordered, he or she receives an appearance fee. Id. at ¶ 16. Jersey Shore sets the appearance fee and per page rate for reporters. Id. at ¶ 17. If a client orders a transcript on an expedited or daily copy basis, the reporter receives more compensation. Ibid.

While DLWD has not provided a certification in support of its arguments, the Agency asserts in its brief that there are facts tending to show that Jersey Shore fails the ABC test. According to DLWD, Jersey Shore “has total control over the activities of the court transcribers from setting the fee charged to the client, the rate of pay the transcriber receives for their services, to the final disposition of the transcribed date is [sic] maintained,” in contravention of Part A; “[t]he services that are provided by the transcribers are performed both at Jersey Shore’s location and at the locations of Jersey Shore’s clients,” in

contravention of Part B; and, "Jersey Shore has failed to provide any credible evidence that Legal Transcriber have any indicia of being in an independently established business" because "Jersey Shore secures the clients, sets the rates for services to be provided and services to be rendered and maintains the records for the duration of the storage requirements," in contravention of Part C. DLWD Brief, p. 6. DLWD also argues with respect to Part C that "none of the workers had their own business location, they utilized the business cards provided by Jersey Shore and had no risk of financial loss if the clients of Jersey Shore did not pay [and] the transcriptionist[s] were compensated for labor services only." Ibid.

LEGAL ANALYSIS AND CONCLUSIONS

In the 1930s, Congress enacted FUTA, 26 U.S.C. §§ 3301 to -3311, thereby "creat[ing] a nationally administered unemployment compensation system" that "encouraged the states to set up their own unemployment compensation systems by granting employers in states complying with the requirements of 26 U.S.C. § 3304 a ninety-percent credit against their federal unemployment taxes for taxes paid to state unemployment plans." Salem Coll. & Acad., Inc. v. Emp't Div., 695 P.2d 25, 29 (1985); Special Care of New Jersey, Inc. v. Bd. of Review, 327 N.J. Super. 197, 207 (App.Div.2000) (citing 26 U.S.C. § 3302), certif. denied, 164 N.J. 190 (2000). However, the federal scheme "does not call for a surrender by the States of powers essential to their quasi-sovereign existence." Steward Mach. Co. v. Davis, 301 U.S. 548, 593, 57 S. Ct. 883, 893, 81 L. Ed. 1279, 1294 (1937).

Instead, "[t]he obvious purpose of § 3304 in demanding adherence to these minimum standards is to establish uniformity, which protects the unemployed in a consistent and predictable manner," and "[o]nce they comply with these mandatory standards, 'states [have] great latitude regarding the parameters of their unemployment-compensation laws.'" Special Care of New Jersey, 327 N.J. Super. at 207 [citing McKay v. Horn, 529 F. Supp. 847, 850-51 (D.N.J.1981); quoting Carpet Remnant Warehouse, Inc. v. New Jersey Dep't of Labor, 125 N.J. 567, 578-79, 593 (1991)]. As such, "[s]tate programs need not mirror the provisions under FUTA in all respects; they are empowered to vary their programs so long as they meet the requirements for certification under § 3304." Id. at 208 [citing, Macias v. New Mexico Dep't of Labor, 21 F.3d 366, 368 (10th Cir.1994)].

New Jersey's response to FUTA, the UCL, is designed "to provide a cushion for the workers of New Jersey 'against the shocks and rigors of unemployment.'" Carpet Remnant Warehouse, 125 N.J. at 581 [quoting Provident Inst. for Sav. In Jersey City v. Div. of Emp't Sec., 32 N.J. 585, 590 (1960)]. To achieve this goal, employers and employees "must contribute a specified percentage of the employee's wages to the Unemployment Compensation Fund," which is "used for the benefit of persons unemployed after qualifying periods of employment." Id. at 582 (citing N.J.S.A. 43:21-7); N.J.S.A. 43:21-2; N.J.S.A. 43:21-9.

Under the UCL, the operative statutory term for contribution liability is "employment," which is defined in pertinent part as a "service . . . performed for remuneration."¹ N.J.S.A. 43:21-19(i)(1)(A). Generally, "[s]ervices performed by an individual for remuneration shall be deemed to be employment" and will trigger an employer's obligation to contribute to the Unemployment Compensation Fund." N.J.S.A. 43:21-19(i)(6). However, not all services performed for remuneration are "employment," and thus are not subject to contributions under the UCL.

First, N.J.S.A. 43:21-19(i)(7) specifically exempts several services that "are also exempt under [FUTA] . . . or that contributions with respect to such services are not required to be paid into a state unemployment fund as a condition for a tax offset credit against the tax imposed by [FUTA]," such as services performed by real estate, mutual fund, and home-to-home salespersons. N.J.S.A. 43:21-19(i)(7)(A)-(Z).

However, even if the DLWD determines that a certain service falls within the definition of "employment" and is not exempt under N.J.S.A. 43:21-19(i)(7), a challenging party may show that the service satisfies the ABC test, and thus, falls outside of the definition of "employment" and is not covered by the UCL. As the Supreme Court has explained, [t]he ABC test becomes applicable only after a determination that the service provided constitutes 'employment' . . . If the [DLWD] determines that the relationship falls within that definition, and is not statutorily excluded, see, N.J.S.A. 43:21-19(i)(7), then the

¹ "Remuneration" is defined as "all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash." N.J.S.A. 43:21-19(p).

party challenging the [DLWD]'s classification must establish the existence of all three criteria of the ABC test.” Carpet Remnant Warehouse, Inc., 125 N.J. at 581.

Finally, while the UCL mirrors FUTA in many respects, our Legislature has chosen to exempt certain services from the definition of “employment” even if they are not also exempt under FUTA. For example, and relevant to this matter, the Legislature amended the UCL in 2010 to specifically exempt services performed by legal transcribers or court reporters irrespective of a parallel exemption under FUTA. P.L. 2009, c. 211.

Prior to the 2010 amendment, services performed by legal transcribers or court reporters were included under N.J.S.A. 43:21-19(i)(7) and, thus, could only be exempt from coverage under the UCL if there was a corresponding exemption under FUTA. Under the old law,

[s]ervices performed by a certified shorthand reporter certified pursuant to P.L. 1940, c. 175 (C.45:15B-1 et seq.), provided to a third party by the reporter who is referred to the third party pursuant to an agreement with another certified shorthand reporter or shorthand reporting service, on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, set forth in the agreement.

[former N.J.S.A. 43:21-19(i)(7)(Y).]

Under the amended law, N.J.S.A. 43:21-19(i)(10), which became effective on January 16, 2010, and remains in effect,

[s]ervices performed by a legal transcriber, or certified court reporter certified pursuant to P.L. 1940, c. 175 (C.45:15B-1 et seq.), shall not be deemed to be employment subject to the ‘unemployment compensation law,’ R.S. 43:21-1 et seq., if those services are provided to a third party by the transcriber or reporter who is referred to the third party pursuant to an agreement with another legal transcriber or legal transcription service, or certified court reporter or court reporting service, on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, set forth in the agreement.

For purposes of this paragraph . . . 'legal transcription service' and 'legal transcribing' mean making use, by audio, video or voice recording, of a verbatim record of court proceedings, depositions, other judicial proceedings, meetings of boards, agencies, corporations, or other bodies or groups, and causing that record to be printed in readable form or produced on a computer screen in readable form; and 'legal transcriber' means a person who engages in 'legal transcribing.'

[N.J.S.A. 43:21-19(i)(10).]

Thus, since January 16, 2010, the services performed by legal transcribers or certified court reporters are exempt from the UCL if they meet the requirements of N.J.S.A. 43:21-19(i)(10). As the Senate Labor Committee explained in a statement accompanying committee amendments to S825, which became N.J.S.A. 43:21-19(i)(10),

[a]s amended by the committee, the bill makes an individual who is a legal transcriber and who works on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, ineligible for unemployment insurance (UI) benefits and thus not subject to UI taxes. The bill provides the exemption to all such individuals categorically without requiring a demonstration that particular individuals are self-employed under the standards provided by either the State UI statute or federal tax rules. . .

The amendments also remove the requirement that the exemption applies only if there is a parallel exemption under federal UI law or if the individuals are found to be self-employed by the IRS under its tax rules.

As such, while services performed by legal transcribers or certified court reporters have been categorically exempt since 2010, such services, prior to 2010, had to also have been exempt under FUTA or the ABC test.

Under the UCL, and its implementing regulations, N.J.A.C. 12:16-1.1 to -24.16, employers must file periodic contribution reports with the DLWD "to disclose the employer's liability for contributions under the [UCL] and at the time of filing each contribution report shall pay the contributions required[.]" N.J.S.A. 43:21-14(a)(1). After

receiving a contribution report, the DLWD may conduct an audit and, “if therefrom there shall be determined that there is a deficiency with respect to the payment of the contributions due from such employer,” the DLWD “shall assess the additional contributions, penalties, and interest due the State from such employer, give notice of such assessment to the employer, and make demand upon him for payment.” N.J.S.A. 43:21-14(d). An alleged employer that disputes its liability for contributions under the UCL may request a hearing before the OAL. N.J.A.C. 12:16-22.1 to -22.6.

When an alleged employer challenges a determination by the DLWD that certain services constitute “employment” and render an employer liable for contributions to the Unemployment Compensation Fund, the first question is whether the services are statutorily excluded under N.J.S.A. 43:21-19(i)(7). In this regard, the DLWD has promulgated rules to help determine what services are excluded under N.J.S.A. 43:21-19(i)(7). N.J.A.C. 12:16-23.1 to -23.2. According to N.J.A.C. 12:16-23.1, the services listed under N.J.S.A. 43:21-19(i)(7) “are exempt only if there is a corresponding exemption under [FUTA] or the services are otherwise not subject to tax or coverage under FUTA.” N.J.A.C. 12:16-23.1(b). The rule further provides that, “[i]f an employing unit pays remuneration for services not specifically listed as exempt under the provisions of FUTA and seeks an exemption under this section, the employing unit has the burden of proof to show that the services are either exempt under FUTA or otherwise not subject to the tax imposed by FUTA.” N.J.A.C. 12:16-23.1(b)(1).

Under N.J.A.C. 12:16-23.2, evidence of a FUTA exemption includes:

1. Private letter ruling(s) from the Internal Revenue Service;
2. An employment tax audit conducted by the Internal Revenue Service after 1987 which determined that there was to be no assessment of employment taxes for the services in question; however, the determination must not have been the result of the application of Section 530 of the Revenue Act of 1978;
3. Determination letter(s) from the Internal Revenue Service; and/or

4. Documentation of responses to the 20 tests required by the Internal Revenue Service to meet its criteria for independence. These tests are enumerated in IRS Revenue Rule 87-41.²

[N.J.A.C. 12:16-23.2(a).]

In sum, legal transcription or court reporting services have been categorically exempt from the UCL since 2010 if they meet the standards set forth in N.J.S.A. 43:21-19(i)(10). However, prior to 2010, such services were only exempt if they were also exempt under FUTA, in accordance with N.J.S.A. 43:21-19(i)(7) or N.J.A.C. 12:16-23.2, or passed the ABC test.

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits" and "[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

Regarding the company's liability for UCL contributions in 2008 and 2009, services performed by legal transcribers or court reporters during those years were included under N.J.S.A. 43:21-19(i)(7) and, thus, could only be exempt from coverage under the UCL if

² In a fairly recent case in which another company challenged its liability for contributions under the UCL, Big Daddy Drayage, Inc. v. Dep't of Labor & Workforce Dev., LID 11214-15, Initial Decision (August 10, 2016), remanded, Acting Comm'r (November 4, 2016) <<https://njlaw.rutgers.edu/collections/oal>>, the Acting Commissioner of the DLWD clarified that an employer may not only prove entitlement to a FUTA exemption through official letters or rulings by the IRS, N.J.A.C. 12:16-23.2(a)(1)(2)(3), but may also "establish a FUTA exemption for the services performed ... by demonstrating to the satisfaction of the Administrative Law Judge and, ultimately, to the satisfaction of the Commissioner of the [DLWD], that it has met the IRS test for independence" through N.J.S.A. 43:21-19(i)(7) and N.J.A.C. 12:16-23.2(a)(4).

The Acting Commissioner also stated that "in the years since the IRS 20 factor test was announced, the IRS has refined its list of factors to include less a list of 20 discrete factors and more an unnumbered listing of factors, subfactors and guidance divided into three separate categories: (1) Behavioral Control, (2) Financial Control, and (3) Type of Relationship." The Acting Commissioner listed those categories and factors as provided on the IRS website at <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>.

exempt under FUTA or if the services satisfied the ABC test to distinguish between employees and independent contractors.

While DLWD neglected to include a certification in opposition to Jersey Shore's motion, as required by N.J.A.C. 1:1-12.5, "procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice." N.J.A.C. 1:1-1.3(b). Here, the relaxation of the summary decision rules is appropriate because DLWD's opposition brief was submitted by an auditor, and not an attorney, and it would be unfair to grant Jersey Shore's motion for the auditor's failure to file a responding certification because his opposition brief sets forth specific facts showing that there are genuine issues that can only be determined in an evidentiary proceeding. Moreover, this matter involves the serious matter of unemployment compensation and should not be decided on a procedural technicality. Accordingly, I **FIND** that there are genuine issues of material fact that necessitate a hearing to determine Jersey Shore's liability for UCL contributions in 2008 and 2009, and therefore **CONCLUDE** that Jersey Shore's motion with respect to its liability for contributions in 2008 and 2009 must be **DENIED** and a hearing held at which Jersey Shore may show that the services provided by the court reporters it engaged in those years were either exempt under FUTA or in accordance with the ABC test.

We next turn to the issue of its liability for UCL contributions on behalf of the court reporters the company engaged in 2010. Under P.L. 2009, c. 211, the Legislature amended the UCL in 2010 to specifically exempt services performed by legal transcribers or court reporters irrespective of a parallel exemption under FUTA, if such services satisfied the requirements of N.J.S.A. 43:21-19(i)(10). Under that provision,

[s]ervices performed by a legal transcriber, or certified court reporter certified pursuant to P.L. 1940, c. 175 (C.45:15B-1 et seq.), shall not be deemed to be employment subject to the 'unemployment compensation law,' R.S. 43:21-1 et seq., if those services are provided to a third party by the transcriber or reporter who is referred to the third party pursuant to an agreement with another legal transcriber or legal transcription service, or certified court reporter or court reporting service, on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, set forth in the agreement.

Here, Jersey Shore's owner, Eugene Ertle, has certified that the services provided by the court reporters his company engaged met the requirements of N.J.S.A. 43:21-19(i)(10), such that the court reporters provided services to third parties such as courts or attorneys on a freelance basis upon referral by Jersey Shore and the compensation received by the court reporters from Jersey Shore was based on a fee per transcript page, flat attendance fee, or other flat minimum fee.

In opposition, DLWD did not raise any genuine issues of material fact with respect to Jersey Shore's liability for UCL contributions in 2010. Instead, DLWD argues that "[a]lthough the Legislature apparently intended to grant employers of court reporters a state exemption from taxation for their services under the UCL without regard to the existence of a corresponding FUTA exemption . . . a state exemption cannot be granted under state law unless there is a corresponding FUTA exemption." As DLWD's opposition appears to be purely based on a legal argument, I **FIND** that there are no material issues of fact as to liability for 2010 and that summary decision may be appropriate.

As the Appellate Division has explained, "[s]tate programs need not mirror the provisions under FUTA in all respects; they are empowered to vary their programs so long as they meet the requirements for certification under § 3304." Special Care of New Jersey, 327 N.J. Super. at 208. In varying our state program to exempt court reporters, the Legislature did not violate FUTA or N.J.S.A. 43:21-19(i)(1)(G), which ensures that any service required to be covered under FUTA is covered by the UCL.

According to the United States Department of Labor, which administers FUTA,

Section 3304(a)(6)(A), FUTA requires that all services performed by employees of state and local governmental entities, certain nonprofit organizations, and federally recognized Indian tribes must be covered by state law unless specifically exempted by Federal law . . .

Therefore, if a state law contains an exclusion from the definition of 'employment' that is not found in FUTA, then that exclusion may not be applied to 3304(a)(6), FUTA, services.

[U.S. Department of Labor, Conformity Requirements for State UC Laws, available at <https://workforcesecurity.doleta.gov/unemploy/conformity.asp>; see also, 26 U.S.C. §§ 3304(a)(6)(A), 3309(a)(1).]

In other words, although court reporters are not specifically exempt from coverage under FUTA, the UCL does not violate FUTA by categorically exempting court reporters, who are not government or nonprofit employees, and thus not required to be covered under state law.

Thus, since Eugene Ertle certified that Jersey Shore's arrangement with the court reporters the company engages satisfies the requirements of N.J.S.A. 43:21-19(i)(10), and DLWD did not raise any genuine issues in this regard, Jersey Shore is entitled to summary decision as a matter of law on the issue of its liability for contributions in 2010.³ Accordingly, I **CONCLUDE** that Jersey Shore is entitled to summary decision on the issue of its liability for UCL contributions on behalf of the court reporters the company engaged in 2010, and the its motion must be **GRANTED** as to that year.

ORDER

It is hereby **ORDERED** that Jersey Shore's motion for summary decision is **DENIED** as to liability for 2008 and 2009, and **GRANTED** as to 2010. A telephone conference between the parties and the undersigned shall be scheduled for no sooner than thirty-days and not later than sixty-days from the date of this order. The purpose of the conference will be to discuss procedures for scheduling and conducting an evidentiary hearing to resolve the remaining issues in this matter.


Additionally, it is noted that DLWD does not state in any of its papers the exact amount of penalties and interest it seeks. According to a November 19, 2013, letter from Jersey Shore's counsel to DLWD, DLWD "requested that Jersey Shore reimburse \$54,147.83 for unpaid taxes, fees, penalties, and interest for the term 2008-2010." At a hearing, DLWD should provide a breakdown of its assessment for 2008 and 2009.

³ The effective date of the 2010 amendment was January 16, 2010.

This order granting partial summary decision is being submitted under N.J.A.C. 1:1-12.5(e) for immediate review. This recommended order may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**, who by law is authorized to make the final decision in this matter. If the **COMMISSIONER OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT** does not adopt, modify or reject this order within forty-five days and unless such time limit is otherwise extended, this recommended order shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this order was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 18, 2018
DATE


ELIA A. PELIOS, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

EAP/nd