

JOSEPH P. PYLMAN  
ASSOCIATEONE PARK PLACE  
300 SOUTH STATE STREET  
SYRACUSE, NEW YORK 13202  
T 315.425.2700 • F 315.425.2701DIRECT DIAL 315.425.2707  
DIRECT FAX 315.703.7395  
JPYLMAN@HBLAW.COM

December 31, 2009

**VIA Electronic Filing and Overnight Mail**Lester A. Heltzer  
Executive Secretary  
NLRB Office of the Executive Secretary  
1099 14th St., N.W.  
Washington, D.C. 20570Re: Carr Finishing Specialties, Inc. and GPC Construction, Inc.  
Case No. 3-CA-27264

Dear Sir:

Please find enclosed eight (8) copies of Carr Finishing Specialties, Inc. and GPC Construction, Inc.'s motion to dismiss the above-captioned unfair labor practice complaint that was previously filed electronically on December 31, 2009. The motion to dismiss consists of a Memorandum of Law, Attorney Affirmation (with exhibits), and a Statement of Service meeting the requirements of Section 102.114(i) of the Board's Rules and Regulations.

Respectfully submitted,



Joseph P. Pylman

jpp/

cc: Alan R. Peterman, Esq.  
**Via Electronic Mail**Daniel R. Brice, Esq.  
Blitman & King, LLP  
*Attorneys for International Association of Bridge, Structural, Ornamental, and  
Reinforcing Iron Workers*  
443 North Franklin Street  
Suite 300  
Syracuse, NY 13204-1415  
Fx: 315.471.2623  
**Via Overnight Mail**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD THIRD REGION

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**CARR FINISHING SPECIALTIES, INC.,  
AND G.P.C. CONSTRUCTION, INC.**

*and*

**INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL, ORNAMENTAL AND  
REINFORCING IRON WORKERS**

**MEMORANDUM OF LAW  
IN SUPPORT OF  
MOTION TO DISMISS**

Case No. 3-CA-27264

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**PRELIMINARY STATEMENT**

G.P.C. Construction, Inc. ("GPC") and Carr Finishing Specialties, Inc. ("Carr") (collectively referred to as "Respondents") respectfully submit this memorandum of law in support of their motion seeking the dismissal, pursuant to 29 C.F.R. § 102.24, of an Unfair Labor Practice Complaint issued in the above-captioned proceeding. The Complaint, issued pursuant to Section 10(b) of National Labor Relations Act (the "Act"), alleges that Respondents have engaged in unfair labor practices by refusing to bargain in good faith with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the "Ironworkers"). However, this Complaint must be promptly dismissed because the Ironworkers' unfair labor practice charge is untimely. The Ironworkers first learned of GPC Construction's operations as early as October 2008, yet filed its unfair labor practice charge on August 3, 2009. Because the charge was filed more than six months after the Ironworkers were first put on notice of GPC's operations, the Complaint should be dismissed.

**STATEMENT OF RELEVANT FACTS**

The Ironworkers filed its charge on August 3, 2009, alleging that Respondents were operating as a single employer/alter ego and failed to apply the collective bargaining agreement to bargaining unit work

performed by GPC. According to the charge, Respondents were operating as a single employer since March 1, 2009. However, according to the Ironworkers' attorney, and the allegations in the Unfair Labor Practice Complaint, the Ironworkers knew as early as October 2008 that GPC was performing bargaining unit work. For example, by letter dated January 30, 2009, the Union's attorney asserted that "it was recently discovered by my clients that Carr Finishing Specialties, Inc. ["Carr"] continues to perform bargaining unit work in the Union's jurisdiction . . . ." Again, in a subsequent letter, dated February 13, 2009, the Union's attorney asserted that "Carr Finishing Specialties, Inc., its successor and/or alter ego has performed bargaining unit work since October, 2008. Specifically, Galvin Carr, his son and employees of Carr Finishing were seen performing iron workers' work at the Rite Aid store in Canandaigua, New York in January, 2009<sup>1</sup>." Contrary to the charge, the Ironworkers had notice as early as October 2008 that G.P.C. Construction was performing bargaining unit work.

### ARGUMENT

This Complaint should be promptly dismissed because the Ironworkers' charge was filed more than six months after it first learned of GPC Construction's operations. The Ironworkers knew in October 2008 that GPC Construction was performing bargaining unit work, yet filed its charge on August 3, 2009. Given the six month statute of limitations provided in Section 10(b) of the Act, this Complaint must be dismissed as the underlying charge is untimely.

Pursuant to 29 U.S.C. § 160(b), "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board . . ." Moreover, "in cases involving allegations of an unlawful alter ego relationship, the Act's six month statute of limitations accrues when the charging party is put on notice of conduct indicating the relationship between the two companies." *National Labor Relations Board v. Herbert Indus. Insulation Corp.*, 97-4143, 1998 U.S.

<sup>1</sup> Galvin Carr IV, Galvin Carr's son, withdrew from the Union in October, 2008. See Peterman Aff. ¶ 9; Exhibit E.

App. LEXIS 1921, \*10 (2d Cir. February 10, 2008); *see also In Re T.E. Elevator Corp.*, 291 N.L.R.B. 1184, 1189 (1988) (“The Board has uniformly held that the six-month limitation period does not begin to run until the injured party has become, or should have become, aware of respondent's unlawful action.”).

To succeed on a motion to dismiss, Respondents must also show that the Union was on "clear and unequivocal notice" that alter ego/single employer status existed more than six months prior to the filing of the charge. *Oklahoma Fixtures Company*, 333 N.L.R.B. 804 (2001). For example, in *Christopher Street Operations, Inc.*, 286 N.L.R.B. 253 (1987), the Union sent the respondent a letter stating it represented the employees and offered the respondent the industry wide agreement or offered to negotiate a new agreement. *Id.* at \*2. The respondent never responded to this letter or any subsequent letter regarding the agreement. *Id.* The Union filed an unfair labor practice charge, alleging that the respondent failed to bargain in good faith. The respondent asserted section 10(b) as a defense, claiming that the date of the first letter started the statute of limitations. However, the Board rejected respondent's argument, stating the Union had no notice that respondent was refusing to bargain in good faith and that the "Union could reasonably believe that [respondent] needed time to consider whether or not to sign the industry wide contract." *Id.* at \*3. The Board ultimately affirmed the administrative law judge's decision to deny respondent's motion to dismiss.

Here, the Ironworkers actually and constructively knew of GPC operations, at the latest, by the end of January 2009. By letter dated January 30, 2009, the Union's attorney asserted that "it was recently discovered by my clients that Carr Finishing Specialties, Inc. ["Carr"] continues to perform bargaining unit work in the Union's jurisdiction . . . ." In a subsequent letter, dated February 13, 2009, the Union's attorney asserted that "Carr Finishing Specialties, Inc., its successor and/or alter ego has performed bargaining unit work since October, 2008." Regardless of whether the Ironworkers were first put on notice in October 2008 or January 2009, the charge was filed more than six months after they discovered

the relationship between Carr Finishing and G.P.C. Construction. Furthermore, the facts do not support the argument that the statute of limitations was tolled – at no time did GPC Construction attempt to conceal its operations. The charge should have been filed in either April 2009 or June 2009. It was not.

Accordingly, as the underlying charge is untimely, this Complaint must be dismissed.

**DATED:** December 30, 2009

**HISCOCK & BARCLAY, LLP**

By: Alan R. Peterman  
Alan R. Peterman

*Attorneys for Respondent*  
G.P.C. Construction, Inc.  
Carr Finishing Specialties, Inc.  
Office and Post Office Address  
One Park Place  
300 South State Street  
Syracuse, New York 13202-2078  
Telephone (315) 425-2775

HISCOCK & BARCLAY, LLP

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD THIRD REGION

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**CARR FINISHING SPECIALTIES, INC.,  
AND G.P.C. CONSTRUCTION, INC.**

*and*

**INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL, ORNAMENTAL AND  
REINFORCING IRON WORKERS**

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**AFFIRMATION IN SUPPORT  
OF RESPONDENTS'  
MOTION TO DISMISS**

Case No. 3-CA-27264

STATE OF NEW YORK     )  
                                  )  
COUNTY OF ONONDAGA )     ss.:

**ALAN R. PETERMAN**, being duly sworn, deposes and states that:

1. I am an attorney duly licensed to practice law before the courts of State of New York and a partner in the law firm of Hiscock & Barclay, LLP, attorneys for Respondents Carr Finishing Specialties, Inc. ("Carr") and G.P.C. Construction, Inc. ("GPC") in the above-captioned matter.
2. I make and submit this Affirmation in support of the Respondents' Motion to Dismiss the Unfair Labor Practice Complaint in this proceeding.
3. The International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the "Ironworkers") filed a charge with the National Labor Relations Board (the "NLRB") on August 3, 2009. A copy of the charge is attached as Exhibit A.
4. The charge alleges that since March 1, 2009, Respondents have operated as a single employer/alter ego and have failed to apply the collective bargaining agreement to bargaining unit work performed by GPC.

5. Based on this charge, the NLRB issued a Complaint on December 4, 2009, alleging that Respondents have refused to bargain collectively and in good faith with the exclusive bargaining representative of their employees. A copy of the Complaint is attached as Exhibit B.

6. A hearing on the Complaint is scheduled for February 1, 2010.

7. The Ironworkers first learned that GPC was performing bargaining unit work much earlier than March 1, 2009. According to a January 30, 2009 letter from the Ironworkers' attorney, Jennifer A Clark, "it was recently discovered by my clients that Carr Finishing Specialties, Inc. ["Carr"] continues to perform bargaining unit work in the Union's jurisdiction . . . ." A copy of this letter is attached as Exhibit C.

8. Again, in a subsequent letter, dated February 13, 2009, the Union's attorney asserted that "Carr Finishing Specialties, Inc., its successor and/or alter ego has performed bargaining unit work since October, 2008. Specifically, Galvin Carr, his son and employees of Carr Finishing were seen performing iron workers' work at the Rite Aid store in Canandaigua, New York in January, 2009." A copy of this letter is attached hereto as Exhibit D.

9. Galvin P. Carr, IV, Galvin Carr's son, withdrew from the Union in October, 2008. A copy of his withdrawal card from the Union is attached hereto as Exhibit E.

10. Therefore, the Ironworkers first learned that GPC was performing bargaining unit work in either October 2008 or January 2009, *not* March 1, 2009.

11. According to Section 10(b) of the National Labor Relations Act, "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board . . . ."

12. Therefore, to be timely, the charge should have been filed in April 2009 or at the latest by July 30, 2009.

13. Instead, the Complaint was filed on August 3, 2009, after the six months statute of limitations for an unfair labor practice had run.

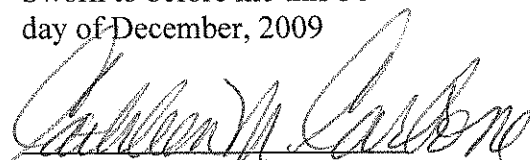
14. As the Complaint was issued based on an alleged unfair labor practice that occurred more than six months prior to the filing of the charge with the Board, it is respectfully submitted that Respondents' motion to dismiss be granted.

**WHEREFORE**, deponent respectfully requests that the Court grant Respondents' motion to dismiss.



Alan R. Peterman

Sworn to before me this 30<sup>th</sup>  
day of December, 2009



Notary Public

CATHLEEN M. CARBONE  
Notary Public State of New York  
Qualified in Gen. Co. No. 01CA6037705  
My Commission Expires Feb. 22, 20 ~~10~~



# EXHIBIT A

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

| DO NOT WRITE IN THIS SPACE |                             |
|----------------------------|-----------------------------|
| Case<br><b>3-CA-27264</b>  | Date filed<br><b>8/3/09</b> |

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

| 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT  |  |   |
|---|--|---|
| a. Name of Employer<br><b>Carr Finishing Specialties and GPC Construction operating as single employers/alter-egos</b>  | b. Number of workers employed<br><b>Approx. 4</b>  |   |
| c. Address (street, city, state, ZIP code)<br><b>947 Cress Rd, Phelps, NY 14532</b>   | d. Employer Representative<br><b>Galvin P. Carr II</b>                                     | e. Telephone No.<br><b>315-521-1338</b> |
| f. Type of Establishment (factory, mine, wholesaler, etc.)<br><b>Construction Company</b>   | g. Identify principal product or service<br><b>commercial siding installation and trim</b> |   |
| h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act. |  |   |

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Since on or about March 1, 2009, the Charged Parties, operating as a single employer/alter-ego have failed to apply the collective bargaining agreement to bargaining unit work performed by GCP Construction.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

**International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers**

|   |  |
|---|--|
| 4a. Address (street and number, city, state, and ZIP code)<br><b>154 Humboldt Street, Rochester, NY 14610</b> | 4b. Telephone No.<br><b>585-288-2630</b> |
|---|--|

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

**International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers**

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Michael Altonberg Michael Altonberg Business Manager  
(signature of representative or person making charge) (title if any)

Address 154 Humboldt Street, Rochester, NY 14610 585/288-2630 7-31-09  
(Telephone No.) (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

# EXHIBIT B

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**CARR FINISHING SPECIALTIES, INC.  
AND G.P.C. CONSTRUCTION, INC.**

**and**

**Case 3-CA-27264**

**INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL, ORNAMENTAL AND  
REINFORCING IRON WORKERS**

**COMPLAINT AND NOTICE OF HEARING**

International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, herein called the Union, has charged that Carr Finishing Specialties, herein called by its correct legal name, Carr Finishing Specialties, Inc., and herein called individually Respondent Carr, and G.P.C. Construction, herein called by its correct legal name G.P.C. Construction, Inc., and herein called individually Respondent GPC, and herein collectively called Respondents, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. §151 et seq., herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

**I**

The charge in this proceeding was filed by the Union on August 3, 2009, and a copy was served by regular mail on Respondents on August 4, 2009.

## II

(a) At all material times, Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise.

(b) At all material times, Respondent Carr and Respondent GPC have had substantially identical management, business purposes, operations, equipment, customers, and supervision, as well as ownership.

(c) In or about April 2008, Respondent GPC was established by Respondent Carr as a disguised continuation of Respondent Carr.

(d) Respondent Carr established Respondent GPC, as described above in paragraph II(c), for the purpose of evading its responsibilities under the Act.

(e) Based on the operations and conduct described above in paragraph II(a) through (d), Respondents are, and have been, at all material times, alter egos and/or a single employer within the meaning of the Act.

## III

(a) At all material times, Respondent Carr, a corporation with an office and place of business located at 947 Cress Road, Phelps, New York, has been engaged in the construction industry as a metal roofing, siding and architectural panel contractor.

(b) At all material times, Respondent GPC, a corporation with an office and place of business located at 947 Cress Road, Phelps, New York, has been engaged in the construction industry as a metal roofing, siding and architectural panel contractor.

(c) During the 12 month period ending in or about October 2008, Respondent Carr, in conducting its operations described above in paragraph III(a), provided services valued in excess of \$50,000 to Rollison Construction Sales, LLC, an entity directly engaged in interstate commerce.

(d) During the past 12 months, in conducting its operations described above in paragraph III(b), Respondent GPC provided services valued in excess of \$50,000 to Rollison Construction Sales, LLC.

(e) At all material times, Rollison Construction Sales, LLC, with an office and place of business located at 175 Humboldt Street, Suite 102, Rochester, New York has been engaged as a metal contractor and metal supplier.

(f) Rollison Construction Sales, LLC, during the past 12 months, in conducting its operations described above in paragraph III(e), purchased and received at its Rochester, New York facility goods valued in excess of \$50,000 directly from points outside the State of New York.

#### IV

At all material times, Respondents have been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### V

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

#### VI

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and agents of Respondents within the meaning of Section 2(13) of the Act:

|                    |    |  |
|--------------------|----|--|
| Gavin P. Carr, III | -- | Owner of Respondent GPC<br>Supervisor of Respondent Carr |
| Sandra Carr        | -- | Owner of Respondent Carr                                 |

## VII

The following employees of Respondents, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing work, as set forth in Article I of the 2006-2009 and 2009-2012 Working Agreement between the Iron Workers of Upstate Locals of New York and Vicinity, consisting of International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers Local Union Nos. 33, 9, 440, 6 and 12 and the Upstate Iron Worker Employers Association, Inc., within the geographic area set forth at Article II of the same agreements.

## VIII

(a) At all material times, Upstate Iron Worker Employers' Association, Inc., herein called the Association, has been an organization composed of employers, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers Local Union Nos. 33, 9, 440, 6 and 12 (herein referred to as "Upstate Locals").

(b) On or about May 1, 2006, the Association and the Upstate Locals executed a collective-bargaining agreement covering the Unit effective by its terms from May 1, 2006 to April 30, 2009, herein called the 2006 Agreement.

(c) On or about April 30, 2009, the Association and the Upstate Locals executed a collective-bargaining agreement covering the Unit effective by its terms from May 1, 2009 to April 30, 2012, herein called the 2009 Agreement.

(d) The 2006 Agreement contains the following language:

**Article 29. DURATION AND TERMINATION**

The Agreement with any amendments thereof made as provided for therein, shall remain in full force and effect from May 1, 2006 until Midnight of April 30, 2009 and unless written notice be given by the Iron Workers Upstate Locals of New York and Vicinity consisting of the Local Unions Nos. 33, 9, 440, 6 and 12 or the Employer Association to the other at least four (4) months prior to such date of the desire for change therein or to terminate the same, it shall continue in effect for an additional year thereafter.

**IX**

(a) On or about September 29, 1997, Respondent Carr executed a membership application and designation of bargaining agent, herein called the Association Agreement and since then has been an employer-member of the Association described above in paragraph VIII(a), and designated the Association to represent it in negotiating and administering collective-bargaining agreements with the Upstate Locals.

(b) The Association Agreement set forth in paragraph IX(a) contains the following language:

It is further understood that no member of [the Association] may resign during the period beginning ninety (90) days prior to the expiration date of the collective bargaining agreement between [the Association] and a Union whose members are employed by the applicant.

(c) On or about September 29, 1997, Respondent Carr granted recognition to the Upstate Locals as the exclusive collective-bargaining representative of the Unit within the



geographic territories of each Local and since said date the Upstate Locals have been recognized as such representative by Respondent Carr without regard to whether the majority status of the Upstate Locals has ever been established under the provisions of Section 9(a) of the Act.

(d) On or about September 26, 2006, Respondent Carr executed a Letter of Assent whereby it agreed to be bound to the 2006 Agreement between the Union and the Association.

(e) Since in or about October 2008, Respondents have failed and refused to apply the terms and conditions of the 2006 August and the 2009 Agreements.

(f) By operation of the language set forth in paragraph IX(b) above, Respondents were bound to the 2006 Agreement and 2009 Agreement.

(g) Alternatively, if Respondents were not bound to the 2006 and to the 2009 Agreement as set forth in paragraph IX(b) and IX (f) above, Respondents were bound to a one year extension of the 2006 Agreement, by operation of the Letter of Assent referenced in Paragraph IX (d) above and the language set forth in paragraph VIII(d) above.

(h) Since on or about May 1, 2009, Respondents have failed and refused to apply the terms of the one-year extension of the 2006 Agreement, as set forth above in paragraph IX(g).

## X

By the conduct described above in paragraph IX(e) and (h), Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(1) and (5) of the Act.

## XI

The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

**WHEREFORE**, as part of the remedy for the unfair labor practices alleged above in paragraph IX the General Counsel seeks an Order, requiring Respondents inter alia, to:

Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of such Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

**WHEREFORE**, as part of an additional remedy for the unfair labor practices alleged above in paragraph IX, the General Counsel seeks an Order requiring that Respondents pay interest on any back pay or other monetary awards on a compounded, quarterly basis.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on February 1, 2010, at 1:00 p. m. at a place to be designated in Rochester, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before December 18, 2009, or postmarked on or before December 17, 2009.**

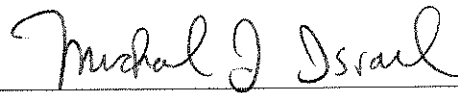
Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on the **E-Gov tab**, select **E-Filing**, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed

untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the complaint are true.

**DATED** at Buffalo, New York, this 4<sup>th</sup> day of December, 2009.



---

**MICHAEL J. ISRAEL**, Acting Regional Director  
**National Labor Relations Board – Region 3**  
Niagara Center Building  
130 S. Elmwood Avenue, Suite 630  
Buffalo, New York 14202

Attachments

# EXHIBIT C

Bernard T. King  
Charles E. Blitman\*  
Jules L. Smith  
James R. LaVaute  
Donald D. Oliver  
Jennifer A. Clark  
Melvin H. Pizer<sup>o</sup>  
Monica R. Heath  
Kenneth L. Wagner  
Timothy R. Bauman  
Stephanie A. Miner  
Nathaniel G. Lambright

Daniel E. Kornfeld<sup>oo</sup>  
Daniel R. Brice  
Edward J. Steve\*  
Jonathan M. Cerrito<sup>a</sup>

Kelly L. Cook, CEBS  
Leslie A. DiGenova, CEBS

Nathan H. Blitman (1909-1990)

\* Also admitted in MA  
<sup>o</sup> Also admitted in FL  
<sup>oo</sup> Also admitted in MD and DC  
<sup>a</sup> Also admitted in CT

# Blitman & King

Attorneys and Counselors at Law LLP

Franklin Center, Suite 300  
443 North Franklin Street  
Syracuse, New York 13204-5412

Phone: 315.422.7111  
Fax: 315.471.2623

RECEIVED

JAN 30 2009

ALAN R. PETERMAN

Syracuse  
Rochester  
Albany

Franklin Center, Suite 300  
443 North Franklin Street  
Syracuse, NY 13204-5412  
Phone: 315.422.7111  
Fax: 315.471.2623

The Powers Building, Suite 207  
16 West Main Street  
Rochester, NY 14614-1601  
Phone: 585.232.5600  
Fax: 585.232.7738

800 Troy-Schenectady Road  
Latham, NY 12110-2424  
Phone: 518.785.4387  
Fax: 518.785.9264

[www.bklawyers.com](http://www.bklawyers.com)



January 30, 2009

Alan R. Peterman, Esq.  
Hiscock & Barclay, LLP  
One Park Place  
300 South State Street  
Syracuse, New York 13202

Roy Z. Rotenberg, Esq.  
Fix Spindleman Brovitz & Goldman, P.C.  
295 Woodcliff Drive, Suite 200  
Fairport, New York 14450

RE: Debtors: Carr Finishing Specialties, Inc. and Sandra Carr

Iron Workers District Council of Western New York and Vicinity Welfare, Pension and Annuity Funds, et. al. v. Carr Finishing Specialties, Inc., Sandra Carr, Individually and as an Officer of Carr Finishing Specialties, Inc., Index No.: 101833

Dear Alan and Roy:

It was recently discovered by my clients that Carr Finishing Specialties, Inc. ["Carr"] continues to perform bargaining unit work in the Union's jurisdiction and, therefore, owes contributions and deductions for the months of November 2008 and December 2008. The amount due is unknown since Carr has not filed its remittance reports. This debt is in addition to the \$36,917.50 judgment issued by the Court on October 7, 2008 and the \$32,257.76 owed for the period August 2008 through October 2008.

Given Carr's continuing delinquencies, my clients are unable to stay enforcement of the judgment and efforts to collect the delinquencies. Please have Carr forward to my office its remittance reports, contributions and deductions for the period November 2008 to date. Upon receipt of the reports and Carr's certified check, we will calculate the interest and liquidated damages and advise you of the same so that Carr can remit payment. If we receive the reports and payment and if Carr timely remits its contributions for January 2009 and thereafter, my clients will consider Rollison Construction Sales LLC's guarantee to pay the \$32,257.76 due for the period August 2008 to October 2008 and consider release of the restraining notice, dated October 27, 2008.

January 30, 2009

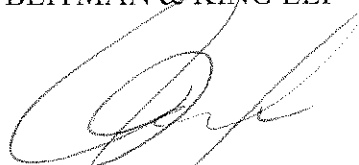
Page 2

We would like to amicably resolve this matter. If payment is not forthcoming, however, we will be forced to contact property owners to alert them to the delinquency and to protect my clients' rights under the Lien Law, Labor Law, and/or State Finance Law.

I look forward to hearing from you.

Sincerely yours,

BLITMAN & KING LLP



Jennifer A. Clark

JAC/jlr

cc: Betty Fedorjaka, Administrative Manager  
Iron Workers District Council Funds

Thomas Pryce, Chairman  
Iron Workers District Council Funds

George Merklung, Trustee  
Iron Workers District Council Funds

Mike Altonberg, Business Manager  
Iron Workers Local Union No. 33

# EXHIBIT D



Bernard T. King  
Charles E. Blitman\*  
Jules L. Smith  
James R. LaVaute  
Donald D. Oliver  
Jennifer A. Clark  
Melvin H. Pizer<sup>o</sup>  
Monica R. Heath  
Kenneth L. Wagner  
Timothy R. Bauman  
Stephanie A. Miner  
Nathaniel G. Lambright

Daniel E. Kornfeld<sup>oo</sup>  
Daniel R. Brice  
Edward J. Steve\*  
Jonathan M. Cerrito<sup>a</sup>

Kelly L. Cook, CEBS  
Leslie A. DiGenova, CEBS

Nathan H. Blitman (1909-1990)

\* Also admitted in MA  
<sup>o</sup> Also admitted in FL  
<sup>oo</sup> Also admitted in MD and DC  
<sup>a</sup> Also admitted in CT

# Blitman & King

Attorneys and Counselors at Law LLP

Franklin Center, Suite 300  
443 North Franklin Street  
Syracuse, New York 13204-5412

Phone: 315.422.7111  
Fax: 315.471.2623

Syracuse  
Rochester  
Albany

Franklin Center, Suite 300  
443 North Franklin Street  
Syracuse, NY 13204-5412  
Phone: 315.422.7111  
Fax: 315.471.2623

The Powers Building, Suite 207  
16 West Main Street  
Rochester, NY 14614-1601  
Phone: 585.232.5600  
Fax: 585.232.7738

800 Troy-Schenectady Road  
Latham, NY 12110-2424  
Phone: 518.785.4387  
Fax: 518.785.9264

[www.bklawyers.com](http://www.bklawyers.com)



RECEIVED

FEB 17 2009

ALAN R. PETERMAN

February 13, 2009

Alan R. Peterman, Esq.  
Hiscock & Barclay, LLP  
One Park Place  
300 South State Street  
Syracuse, New York 13202

RE: Iron Workers District Council of Western New York and Vicinity Welfare,  
Pension and Annuity Funds, et. al. v. Carr Finishing Specialties, Inc., Sandra Carr,  
Individually and as an Officer of Carr Finishing Specialties, Inc.

Index No.: 101833

Dear Alan:

Pursuant to your request, enclosed are copies of the executed signature pages to the collective bargaining agreements. The Agreements consists of forty-two (42) pages. Since your clients are obligated to pay the cost and expense of any collection proceeding, I would appreciate it if you would forward to our offices a check in the amount of \$8.40 in payment of the photocopying fees. As indicated by the enclosures, the Agreements are effective for the period May 1, 2006 through April 30, 2009 and May 1, 2006 through April 30, 2010. The Agreements automatically renew on a year-to-year basis if proper notice is not given to terminate the same.

According to my clients, Carr Finishing Specialties, Inc., its successor and/or alter-ego has performed bargaining unit work since October 2008. Specifically, Galvin Carr, his son and employees of Carr Finishing Specialties, Inc. were seen performing iron workers' work at the Rite Aid store in Canandaigua, New York in January 2009. Please explain why this work is not covered by the collective bargaining agreement, advise us of the identity of the company performing the work, and advise us of the identity of the individuals' employer.

# Blitman & King LLP

February 13, 2009

Page 2

Since it appears that your clients may be attempting to avoid their obligations under the collective bargaining agreement, my clients will be scheduling an audit of the Company's books and records to determine the extent of its outstanding obligations. As indicated in my correspondence of January 29, 2009, settlement on the terms previously proposed by Rollison Construction Sales, LLC and Carr Finishing Specialties, Inc. will not be considered until we resolve the foregoing issues and your clients comply with the collective bargaining agreement.

Once you have had an opportunity to review this matter, please contact me to discuss the audit and a resolution.

Sincerely yours,

BLITMAN & KING LLP

  
Jennifer A. Clark

JAC/jlr  
Enclosures

cc: Betty Fedorjaka, Administrative Manager  
Iron Workers District Council Funds

Thomas Pryce, Chairman  
Iron Workers District Council Funds

George Merklng, Trustee  
Iron Workers District Council Funds

Mike Altonberg, Business Manager  
Iron Workers Local Union No. 33

# EXHIBIT E

**HONORABLE WITHDRAWAL CARD FOR PERSONS NOT WORKING AT THE TRADE**



**International Association of Bridge, Structural,  
Ornamental and Reinforcing Iron Workers**

**AFFILIATED WITH A.F.L.-C.I.O.** November 30, 2008

**GALVIN P. CARR IV**

This Certifies, That \_\_\_\_\_  
Membership No. 1212605 the holder hereof, is on this day and  
date a member in good standing of Local Union No. 33 of ROCHESTER, NY

and is granted this Withdrawal Card, (subject to laws on reverse side) which exempts this individual from all dues and assessments, and acquits holder of all rights to benefits of any kind whatsoever in said organization, and he/she is required to deposit the Withdrawal Card in the Local Union through which the Withdrawal Card was issued before seeking work under the jurisdiction of any Local Union, and he/she promises not to violate any trade requirements of said International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, or its affiliated Local Unions, while holding this card.

Witness our hands, the day and year first above written.

(SEAL)

*Joseph J. Hunt*

General President

*Walter W. Wise*

General Secretary

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD THIRD REGION

**CARR FINISHING SPECIALTIES, INC.,  
AND G.P.C. CONSTRUCTION, INC.**

**AFFIDAVIT OF  
SERVICE**

*and*

Case No. 3-CA-27264

**INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL, ORNAMENTAL AND  
REINFORCING IRON WORKERS**

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

**JILL M. HUFFSTATER**, being duly sworn, deposes and says that deponent is not a party to the within action, is over eighteen (18) years of age and resides in Hastings, New York. That on December 31, 2009 deponent served copies of Carr Finishing Specialties, Inc. and G.P.C. Construction, Inc.'s Affirmation in Support of Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss upon:

Daniel Brice, Esq.  
Blitman & King, LLP  
Franklin Center, Suite 300  
443 North Franklin Street  
Syracuse, New York 13204-5412

by depositing a true copy of same enclosed in post-paid properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
\_\_\_\_\_  
**Jill M. Huffstater**

Subscribed and sworn to before me  
this 31<sup>st</sup> day of December, 2009.

  
\_\_\_\_\_  
Notary Public

SYLIB01\7377041

Catherine A. Fiorini  
Notary Public in the State of New York  
Qualified in Onondaga County No. 4939842  
My Commission Expires August 1, 2010.