UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RAYMOND INTERIOR SYSTEMS

and Case 21-CA-38492

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL UNION 200, AFL-CIO

and Case 21-CA-38589

SOUTHERN CALIFORNIA PLASTERING GROUP BENEFIT TRUST C/O AMERICAN BENEFIT PLAN ADMINISTRATORS, INC., et al.

SOUTHWEST REGIONAL COUNCIL OF CARPENTERS

and Case 21-CB-14576

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL UNION 200, AFL-CIO

RESPONDENT'S REPLY BRIEF TO CHARGING PARTY UNION'S ANSWERING BRIEF TO RESPONDENTS' EXCEPTIONS TO DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE JOHN J. McCARRICK

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Respondent Southwestern Regional Council of Carpenters, ("the Carpenters Union") hereby submits this Reply Brief to the Charging Party Operative Plasterers' and Cement Masons' International Association Local Union 200, AFL-CIO's ("the Plasterers Union's") Answering Brief to the Carpenters Union's Exceptions.

First, the Carpenters Union hereby joins in the Reply of Petitioner Raymond Interior Systems ("Raymond").

In addition, the Carpenters Union hereby address two additional issues in further detail: 1. The ALJ's finding that the Carpenters Union violated Section 8(b)(1)(A) by giving away tools and cash at the August 6, 2008 meeting; and 2. The ALJ's finding that Respondents violated the Act by engaging in actions not alleged in the Complaint.

I. GIVING AWAY TOOLS AND CASH AT THE AUGUST 6, 2008 MEETING IS NOT A VIOLATION OF SECTION 8(b)(1)(A)

The Plasterers Union's Answering Brief does not dispute any of the cases cited by the Carpenters Union which show that the giving away of tools and cash at the August 6, 2008 meeting is not a violation of Section 8(b)(1)(A). Instead, the Plasterers Union simply asserts that the Carpenters Union violated Section 8(b)(1)(A) of the Act by "giving away tools and money to Raymond employees..." and cites *In re Clock*, 338 NLRB 829-830 (2003). However, in *In re Clock*, the ALJ held that a union violated 8(b)(1)(A) of the Act by receiving and accepting assistance from an employer by accepting recognition and entering into a collective-bargaining agreement with the employer containing a union security clause at time when it did not represent an uncoerced majority of the employer's employees. *Id.* The case did not involve a union giving away prizes and/or money to employees and therefore should not be relied on regarding this issue.

As explained in the Carpenters Union's Exceptions Brief, it is not unlawful for a union to induce or encourage employees in the exercise of their Section 7 rights–only to restrain or coerce them. *See* 29 U.S.C. Section 158(b)(1). There appears to be no Board law prohibiting raffles outside of the election context, nor does the Plasterers Union cite any such cases. Therefore, there is no basis for finding the raffle in this case to be unlawful, as it was not conducted in conjunction with either an election or a voluntary request for Section 9(a) recognition.

Furthermore, raffles are lawful where the surrounding circumstances indicate that they would not tend to unlawfully influence the outcome of the election. See, i.e., BFI Waste Systems, 334 NLRB 934, 935 (2001) (citing B&D Plastics, 302 NLRB 245 (1991); Ryder Student Transportation Svcs., 332 NLRB 1590 (2000). Here, every employee present at the meeting received some sort of prize, and neither the eligibility for receipt of a prize, nor the value of the prize awarded, was tied in any way to signing an authorization card or joining the union. There is simply no basis for concluding that the raffle was an unlawful inducement or that it impermissibly affected the exercise of employee free choice. Therefore, the ALJ was incorrect in concluding that in giving employees cash and tools, the Carpenters Union violated Section 8(b)(1)(A) of the Act. ALJD 18:40-42.

II. THE ALJ ERRED IN FINDING RESPONDENTS VIOLATED THE ACT BY ENGAGING IN ACTIONS NOT ALLEGED IN THE COMPLAINT

The Plasterers Union's Answering Brief fails to address the issue raised by the Carpenters Union in their Exceptions Brief that the General Counsel altered its theory against the Carpenters Union to include allegations of use of company facilities, holding a mandatory meeting on company time and promising increased benefits as unlawful assistance, during the hearing. Tr. 320-336. Counsel for the Carpenters Union objected to the General Counsel's questions

regarding the details of the meeting beyond the allegations of the Complaint during the hearing, but the ALJ overruled the objection. Tr. 327-328.

The Plasterers Union's Answering Brief does not address, nor dispute the Carpenter Union's position that, in order to find a Respondent to have violated the Act, the specific violation must be alleged somewhere in the Complaint. Albertson's, Inc., 351 NLRB 254, 255 (2007). Here, the ALJ's Decision acknowledges that the specific violations at issue are not alleged in the Complaint. ALJD 18:48-51. Although the Carpenters Union's raffle of tools and monetary prizes occurred at the August 6, 2008 meeting, this does not relate to when and where the meeting occurred, or if anything was said to the employees regarding increased pay during the meeting. Therefore, the ALJ's conclusory footnote that these additional violations were "closely related" is insufficient and his findings that Respondents violated the Act through the use of company facilities, holding a mandatory meeting on company time and telling plastering employees that the Carpenters Union would increase their pay must be reversed.

III. CONCLUSION

For the foregoing reasons, Respondent Carpenters Union respectfully requests that the Board sustain its exceptions to the Decision of the Administrative Law Judge and accordingly modify his findings, conclusions of law, recommended Remedy, recommended Order, and recommended Notice to Members.

DATED: June 23, 2010

Respectfully submitted,
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/s/ Daniel M. Shanley

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is DeCARLO, CONNOR & SHANLEY, a Professional Corporation, 533 South Fremont Avenue, Ninth Floor, Los Angeles, California 90071-1706.

On June 23, 2010, I served the herein document described as RESPONDENT'S REPLY BRIEF TO CHARGING PARTY UNION'S ANSWERING BRIEF TO RESPONDENTS' EXCEPTIONS TO DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE JOHN J. McCARRICK via e-mail as indicated below:

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Executed on June 23, 2010, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Nelly Caywood