UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SPURLINO MATERIALS, LLC, SPURLINO MATERIALS
OF INDIANAPOLIS, LLC, or in the alternative,
SPURLINO MATERIALS, LLC, AND
SPURLINO MATERIALS OF INDIANAPOLIS, LLC,
as a single, integrated enterprise

Respondent,

and CASE NO. 25-CA-31565

COAL, ICE BUILDING MATERIAL,
SUPPLY DRIVERS, RIGGERS, HEAVY HAULERS,
WAREHOUSEMEN AND HELPERS,
LOCAL UNION NO. 716 a/w INTERNATIONAL
BROTHERHOOD OF CHAUFFEURS, TEAMSTERS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Charging Party.

EXCEPTIONS OF RESPONDENT

Respondent, Spurlino Materials, LLC ("SM"), or Spurlino Materials of Indianapolis, LLC ("SMI"), or in the alternative SM and SMI as a single, integrated enterprise, by counsel and pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (the "Board"), makes the following exceptions to the March 15, 2011 Decision (the "Decision") of Administrative Law Judge Jeffrey D. Wedekind (the "ALJ") on the basis that the Decision's findings and conclusions are erroneous as a matter of law, are not supported by substantial evidence, misapply the facts to the law, and make improper credibility resolutions:

1. The Decision at page 2 is in error because it finds that SM and SMI are a single employer and they violated the National Labor Relations Act as alleged.

2. The Decision at page 4 is in error because it finds Jim Cahill ("Cahill"), President of Teamsters Local Union No. 716 ("Local 716"), called the March 2010 meeting in response to

calls from unit employees regarding the unfair labor practice case related to Gary Stevenson ("Stevenson") and the contract negotiations. No driver testified that he called Cahill or raised any concern whatsoever with Cahill regarding the pending unfair labor practices cases. Moreover, Local 716's attorney testified that he was unaware of any employee calling in or otherwise calling a meeting to discuss the reinstatement of Stevenson. *Tr.* at 25. Cahill called the strike vote meeting to convince the bargaining unit employees to vote for an economic strike disguised as a ULP strike. This is evidenced by, among other things, the length in time between Stevenson's discharge and the strike vote meeting, Cahill's and Lohman's explicit instructions to consider the strike a ULP strike in order to have job protection, statements by strikers, and the fact Local 716 never requested Stevenson's reinstatement before it called a strike. *See, e.g., R. Exs. 14-16*; *Tr.* at 114-15, 119, 164, 169-70, 204, 206, 220, 222-23, 228, 231-32, 252, 261, 263, 265, 581, 586-88, 601-02, 604, 611-12.

3. The Decision at page 4 is in error because it cites testimony of Cahill that contains hearsay. Cahill testified to statements allegedly made by bargaining unit employees over SMI's objection. *Tr.* at 146-47.

4. The Decision at page 4 is in error because it finds Local 716's attorney gave an update on contract negotiations at the 2010 meeting only because a bargaining unit employee asked a question about the status of the contract negotiations. The meeting was expressly called in order to call a strike to force contract negotiations.

5. The Decision at page 5 is in error because it finds that the bargaining unit employees voted to strike because they wanted to engage in a ULP strike. The Decision ignores credible evidence that the employees were simply following the lead of Cahill and Local 716's attorney. *Tr.* at 229.

6. The Decision on pages 4 and 5 is in error because it fails to place importance on the failure of Matt Bales ("Bales") to testify. Bales is the employee who allegedly discussed the strike vote meeting with Cahill and informed the bargaining unit employees that a strike would occur. His absence requires the inference that his testimony would be unfavorable to the Union; namely, that the true reason for the meeting was to have a strike vote for economic reasons.

7. The Decision at pages 10-15 is in error because it fails to conclude that the alter ego or "single employer" doctrine does not apply to this matter.

8. The Decision at pages 10-11 is in error because it finds that SM and SMI have common management, namely, James Spurlino ("Spurlino"), and that this factor supports single-employer status. Among other reasons, SM and SMI do not share common managers of daily business operations. The managers who work for SMI do not also work for SM. *Tr*. at 80, 567-68, 645. There is no common supervision of daily operations between the two entities. *Tr*. at 646. The way employees are dispatched differs completely, *Tr*. at 665-66, the drivers hours are scheduled by different individuals, *Tr*. at 670, the raw materials are purchased from different vendors, *Tr*. at 649, and the job duties that drivers are responsible for completing differ greatly between the two entities, *Tr*. at 671-72. Finally, the managers who are instrumental in SM's operations had no involvement in the negotiations of SMI and Local 716. *Tr*. at 669.

9. The Decision at pages 11-14 is in error because it improperly determines that SM and SMI's operations are interrelated and that this factor supports single-employer status. The relationship between SMI and SM is merely that of a debtor-creditor. Otherwise, there is no relationship between the entities. *Tr*. at 432-36, 645-47, 649, 651-60, 677-78.

10. The Decision at page 12-13 is in error because it finds that the SM's and SMI's transactions between each other were not at arms length. Among other things, the ALJ failed to

credit the testimony of Spurlino that SM typically charged other companies, including SMI, the employee's regular wage plus a 30 percent premium to cover the cost of the employee's benefits and SM's overhead and profit. *Tr.* at 411, 436, 441-42, 673-74.

11. The Decision at page 14 is in error because it finds SM and SMI share common control of labor relations. The labor relations of SM and SMI are entirely distinct and separate. SMI's Operations Manager, Jeff Davidson ("Davidson"), is SMI's representative in collective bargaining agreement negotiations. Moreover, SM and SMI each have their own human resources teams, who are independently responsible for the hiring, firing and scheduling of each separate entity. Neither entity can control hiring, firing, supervision or discipline of the other entity's employees. *Tr.* at 79-80, 569, 559-80, 613, 668, 670, 680.

12. The Decision at page 16-20 and 23 is in error because it finds the August 2010 strike was motivated, at least in part, by SMI's alleged unfair labor practices. This finding is not supported by substantial evidence because it ignores evidence that the purpose of the August 2010 strike was to force SMI to conduct contract negotiations, ignores the length in time between the alleged ULP and the strike, ignores statements by bargaining unit employees, credits the Union's self-serving statements, and fails to draw an adverse inference for the Union's failure to call Bales to testify. *R. Exs. 14-16*; *Tr.* at 165-66, 168, 169-70, 179-80, 185, 187, 193, 204-07, 220, 225-29, 231-32, 237, 239, 245-46, 251-52, 263-70, 581, 586-88, 601-04, 738,

13. The Decision at pages 16-17 and 22-23 is in error because it credits the testimony of employee Terry Mooney ("Mooney") that he chose to strike, at least in part, because of Stevenson's discharge. Mooney's testimony is contradicted by his prior written letter and e-mail to the International Brotherhood of Teamsters ("IBT"). *R. Exs. 14-15*. Mooney also denied

sending the e-mail even though the letter (which Mooney admits sending) and the e-mail each contain the exact same misspelling of the word "advice." *See R. Ex. 14* and *15*.

14. The Decision at page 17, 19, and 22 is in error because it credits the testimony of employee Blackston Poindexter ("Poindexter") that he chose to strike, at least in part, because of Stevenson's discharge. Poindexter admitted that neither he nor Local 716 voted to strike when Stevenson lost his job three and one half years prior to the vote (i.e. February 2007), when the ALJ decided the unfair labor practice charge involving Stevenson (i.e. December 2007), or when the Board originally issued its decision affirming the ALJ's decision (i.e. March 2009). Moreover, at the time of the strike vote, Poindexter was concerned about reaching a contract with SMI, the fact that he had not had a wage increase in a long, long time, and receiving additional benefits. In fact, Poindexter admitted he was interested in doing whatever it took to get SMI to agree to a contract with Local 716. *Tr*. at 263-65.

15. The Decision at page 18 is in error because it failed to find that the passage of time between Stevenson's supervision in August, 2006 and subsequent discharge in February, 2007 and the August 2010 strike supports SMI's claim that the true purpose of the August 2010 strike was to force SMI into contract negotiations.

16. The Decision at page 18 is in error because the ALJ found that it was "equally as likely" that the August 2010 strike was motivated by economics as unfair labor practices, yet he determined that Counsel for the General Counsel met her burden of proving that the strike was motivated by unfair labor practices.

17. The Decision at page 19 is in error because it failed to find the employees' expressed frustration regarding the contract negotiations supports SMI's claim that the true

purpose of the August 2010 strike was to force SMI into contract negotiations. *Tr.* at 270, 602-04.

18. The Decision at page 19 is in error because it failed to find that the employees' failure to raise Stevenson's discharge at the May 19 meeting with SMI Operations Manager Davidson supports SMI's claim that the true purpose of the August 2010 strike was to force SMI into contract negotiations. *R. Exs. 10-11*; *Tr.* at 234-35, 244, 598-99, 601-05, 615, 626.

19. The Decision at page 19 is in error because it failed to find that Local 716's delay in requesting Stevenson's reinstatement until August 2010 supports SMI's claim that the true purpose of the August 2010 strike was to force SMI to negotiate a contract. *Tr.* at 170, 179-80, 193, 581, 596.

20. The Decision at page 20-23 is in error because it failed to find that statements by strikers supports SMI's claim that the true purpose of the August 2010 strike was to force SMI to negotiate a contract.

21. The Decision at page 21 is in error because it discredits the testimony of Davidson regarding Ipock's statement about the true purpose of the August 2010 strike. Davidson's testimony is corroborated by his handwritten notes.

22. The Decision at page 23-25 is in error because it fails to find that the bargaining unit employees engaged in an illegal partial strike.

23. The Decision at pages 24 and 25 is in error because it improperly placed weight on the fact the strikers did not actually perform work on the Convention Center Project, that SMI was able to continue its operations, and that requiring the bargaining unit employees to choose between not striking or striking and violating the PLA violates the general statutory policy favoring the right to strike. Requiring employers to demonstrate actual harm to their operations

before they can discharge partial strikers undermines the purpose of prohibiting partial strikes, namely, to protect employers' operations.

24. The Decision at page 24 is in error because it finds the no-strike/no-lockout clause in the Project Labor Agreement for the Convention Center Project relieved the bargaining unit employees of their duty under established Board precedent to refrain from engaging in an illegal partial strike.

25. The Decision at page 25 is in error because it concludes that SMI's refusal to immediately reinstate strikers once they made an unconditional offer to return to work, a conclusion not supported by the evidence and contrary to the evidence presented. In addition, the Decision erroneously concludes the strike in which the bargaining unit engaged was an unfair labor practice striker rather than an illegal partial strike or an economic strike.

26. The Decision at page 26 is in error because it required a remedy where unfair labor practices have been improperly found.

27. The Decision at pages 26-27 is in error because it orders SMI to comply with the Decision.

Respectfully submitted,

/s/ James H. Hanson
James H. Hanson

/s/ A. Jack Finklea
A. Jack Finklea

Attorneys for Respondents, Spurlino Materials, LLC, and Spurlino Materials of Indianapolis, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on April 12, 2011 and served the same day upon the following:

Ms. Kim Sorg-Graves
National Labor Relations Board
575 N. Pennsylvania, Room 238
Indianapolis, IN 46204

Mr. Neil Gath
Mr. Geoffrey S. Lohman
Fillenworth, Dennerline, Groth & Towe
429 E. Vermont Street, Suite 200
Indianapolis, IN 46202

/s/ James H. Hanson
James H. Hanson

James H. Hanson
jhanson@scopelitis.com
A. Jack Finklea
jfinklea@scopelitis.com
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
10 West Market Street, Suite 1500
Indianapolis, IN 46204
Phone (317) 637-1777
Fax (317) 687-2414
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