

National Labor Relations Board  
1099 14th St. N.W.  
Washington, D.C. 20570-0001

**Case 34-CA-12616**

**Respondent: International Bridge & Iron Co.**

**Exceptions to the Decision of the Administrative Law Judge**

Pursuant to Section 102.46, the Respondent, International Bridge & Iron Co. files the following exception to the Administrative Law Judge's Decision:

***Overview of Position***

It is both disingenuous and a miscarriage of justice to contend that the Respondent has failed to produce evidence or supporting documentation of the insurance carrier's decision to terminate coverage when the Respondent stated in its request for postponement on November 3, 2010 that:

- (a) Respondent is currently engaging in its best efforts to compile the requested documentation, however will not be able to compile all the requested documentation by the trial date.*
- (b) Further hindering Respondent's efforts, many of the documents requested in the subpoena are within the control or possession of the third parties, in particular the insurance carriers and insurance vendors, and Respondent is attempting to expedite disclosure of those documents. See Exhibit 1.*

To fail to enable the Respondent the time necessary to obtain the records in the possession of the insurance carriers, and to deny a second motion at trial to then rule, in part, based on the Respondent's failure to offer these records is the essence of the denial of due process.

**Exception 1.** Page 2, Line 5.

The Administrative Law Judge (ALJ) states “The Respondent makes the same arguments in support of its motion to re-open that I rejected at the hearing.”

This decision neither references the basis for the motion or the reason for denial. Further, the ALJ gives an opinion as to what the Respondent *does not claim*. The ALJ fails to state the grounds for the motion to re-open, grounds for the prior motion to postpone or the basis for his denial. Had he done so, the record would reflect that the motions were based on the need to obtain evidence in possession of the third party insurance carriers and the successor.

**Exception 2.** Page 2. Line 15.

The ALJ states: “Moreover, its claim that Manafort is a successor is irrelevant to the issue raised by the complainant because any successorship, if it occurred, post-dated the unfair labor practice.” However, the ALJ later states, “Rosasci admitted to having one prior discussion with Manafort in late 2009, when the Respondent was having trouble making payroll and keeping its workers compensation insurance in place. According to Rosaci, Manafort’s concern at the time was ensuring that the Respondent completed the fabrication work so there would be no disruption on Manafort’s construction project.” Page 5, Footnote 5, Line 50. As the Respondent testified, the Manafort project was virtually the entirety of the work of the organization.

To hold that Manafort was not a successor prior to the date of the unfair labor practice while paying the employees, maintaining workers’ compensation, occupying the premises and employing the workforce is to deny the concept of successorship altogether.

**Exception 3.** Page3, Line 50.

The ALJ decision states: “These benefits also ceased on February 28 even though the laid off employees had been paying the premiums to continue receiving these benefits.” The statement is not based in fact, and is erroneous and prejudicial. The Respondent truthfully testified that the coverage was cancelled by the carrier. The ALJ’s determination that “employees had been paying the premiums to continue receiving these benefits” is not based upon the record, documents or facts. It is mere conjecture and serves only to prejudice the finding that the employer was engaged in a form of misconduct.

**Exception 4.** Page 6, Line 10.

The ALJ states: “The testimony of Lough and Bachta that they were faced with an ‘emergency’ requiring the cessation of operations on February 26 was elicited by leading questions of counsel and is self serving.” The characterization of the testimonial evidence as “self serving” merely reflects the prejudice of the decision. In an adversarial system, each side presents evidence which is “self serving.” The questions elicited the truth of the matter: the two witnesses testified that they had met with their attorneys and were told that the business must close immediately. The ALJ now seeks to minimize their testimony as “self serving” and to further claim that, because they did not present documents despite his denying the Respondent’s request for more time for that purpose, that the testimony does not warrant deference. Moreover, the questions he characterizes as ‘leading’ were questions which he permitted to be asked.

**Exception 5.** Page 6, Line 35.

The decision states: “One of the effects of the Respondent’s decision to cease operations and terminate its employees was the termination of the health and dental and life insurance benefits required under the collective bargaining agreement. The Respondent attempted to show that the decision to terminate the benefit plans was made by its’ insurance carrier. The Respondent offered no evidence to support this claim other than the unsupported hearsay testimony of Lough regarding a conversation she had with an unidentified Aetna representative.” Respondent stated in its request for postponement on November 3, 2010 that:

- (c) Respondent is currently engaging in its best efforts to compile the requested documentation, however will not be able to compile all the requested documentation by the trial date.*
- (d) Further hindering Respondent’s efforts, many of the documents requested in the subpoena are within the control or possession of the third parties, in particular the insurance carriers and insurance vendors, and Respondent is attempting to expedite disclosure of those documents. See Exhibit 1.*

To fail to enable the Respondent the time necessary to obtain the records in the possession of the insurance carriers and to deny a second motion at trial only to then rule based on the Respondent’s failure to offer these records denies the Respondent due process.

**Exception 6.** Page 7, Line 15.

The ALJ states: “I am also not persuaded by the Respondent’s attempts to show that Manafort Brothers was a successor liable to remedy the Respondent’s unfair labor practices under *Golden State*... The Respondent came forward with no such evidence.” The record shows that the Respondent sought a postponement of the hearing for the

purpose of obtaining evidence on this and other facts essential to the Respondent's case. The denial of a postponement to enable the Respondent to obtain evidence from third parties followed by a ruling against the Respondent based on the failure to provide evidence is a travesty to due process.

Respectfully Submitted:



Robert D. Noonan, Esq.  
For the Respondent, International Bridge & Iron Co.

Dated: May 16, 2011

### Certificate

I hereby certify that a copy of the forgoing was faxed on this date to the following:

Sarah Karpinen, Counsel for the Acting General Counsel  
Fax: 313-226-2090

J. William Gagne Jr., Esq.  
Anthony Rosaci, Admin.  
Fax: 860-561-6204

BY   
Robert D. Noonan, Esq.

*Sent Via Fax 404-331-2061*

Associate Chief Justice William N. Cates  
Division of Judges  
401 Peachtree Street  
Atlanta, Georgia

Re: Case 34-CA-12616  
Respondent: International Bridge & Iron Co.

**Request for Postponement**

The Respondent, International Bridge & Iron Co., respectfully moves for a postponement of the trial which is currently scheduled for November 9, 2010.

Respondent seeks a postponement in order to comply with the subpoena duces tecum served on the Respondent on October 20, 2010.

In seeking this postponement, Respondent and Respondent's counsel represent as follows:

- (a) On October 20, 2010, the Board served a subpoena duces tecum on the Respondent requesting documents be provided to the Board on November 8<sup>th</sup>, in anticipation of the trial on November 9<sup>th</sup>;
- (b) The subpoena is voluminous in requesting copies of all correspondence, including emails, between Respondent and its health care vendors, and between Respondent and its bank, for a period of almost two years. In addition, the request seeks any documents relied on by Respondent in deciding to cease its operations and seeks all policies and documents reflecting the Respondent's arrangements with health care carriers and vendors.

- (c) Respondent is currently engaging in its best efforts to compile the requested documentation, however will not be able to compile all the requested documentation by the trial date.
- (d) Further hindering Respondent's efforts, many of the documents requested in the subpoena are within the control or possession of the third parties, in particular the insurance carriers and insurance vendors, and Respondent is attempting to expedite disclosure of those documents.
- (e) Once the documents are compiled, Respondent will need the opportunity to review the records with its counsel to prepare for the trial. In addition, given that the documents may contain confidential information or protected health information of plan participants, Counsel will need the opportunity to review the documents under the Health Insurance Portability and Accountability Act before disclosure is made.
- (f) This is Respondent's first request to postpone the trial.

Respondent respectfully requests a postponement of the trial currently scheduled for November 9<sup>th</sup> in order to comply with the subpoena received on October 20<sup>th</sup> and to prepare for the trial in light of those documents requested.

Respondent proposes the following dates for the rescheduling of the trial December 9-10, December 20-22, and January 5-7. If additional dates are needed, the Respondent is glad to make those available to the Board at its request.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Robert D. Noonan". The signature is written in a cursive style with a large initial "R".

Robert D. Noonan, Esq.  
Counsel for the Respondent, International Bridge and Iron Company

**Certificate**

I hereby certify that a copy of the forgoing was faxed on the 3<sup>rd</sup> of November,  
2010, to the following:

Sarah Karpinen, Counsel for the Acting General Counsel  
Fax: 313-226-2090

J. William Gagne Jr., Esq.  
Anthony Rosaci, Admin.  
Fax: 860-561-6204



BY \_\_\_\_\_  
Robert D. Noonan, Esq.