

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

ENGINEERING CONTRACTORS, INC. and
ECI OF WASHINGTON, LLC, ALTER EGOS,

Respondents,

PLUMBERS LOCAL 5, UNITED ASSOCIATION
OF JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY OF
THE UNITED STATES AND CANADA, AFL-CIO,

Case No. 5-CA-36213

STEAMFITTERS LOCAL 602, UNITED ASSOCIATION
OF JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY OF
THE UNITED STATES AND CANADA, AFL-CIO,

Case No. 5-CA-36214

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL 100,

Case No. 5-CA-36216
Case No. 5-CA-36306

ASBESTOS WORKERS LOCAL 24, PENSION FUND,
ASBESTOS WORKERS LOCAL 24 MEDICAL FUND,
AND ASBESTOS WORKERS LOCAL 24 APPRENTICESHIP
FUND, AFFILIATED WITH INTERNATIONAL
ASSOCIATION OF HEAT AND FROST INSULATORS
AND ALLIED WORKERS, LOCAL 24, AFL-CIO

Case No. 5-CA-36225

Charging Parties.

**JOINT ANSWERING BRIEF OF CHARGING PARTIES
PLUMBERS LOCAL 5 AND STEAMFITTERS LOCAL 602**

Pursuant to Section 102.46 of the Board's Rules and Regulations, 29 C.F.R. § 102.46, Charging Parties Plumbers & Gasfitters Local 5 ("Plumbers Local 5") and Steamfitters Local 602 submit this Joint Answer Brief in opposition to the exceptions filed by Engineering Contractors, Inc. and ECI of Washington, LLC from the September 1, 2011 decision of Administrative Law Judge ("ALJ") Bruce D. Rosenstein.

I. INTRODUCTION

This case presents the National Labor Relations Board with a textbook example of a disguised continuance. Engineering Contractors, Inc. (“Engineering Contractors”) was a signatory to collective bargaining agreements with Plumbers Local 5 and Steamfitters Local 602 (as well as Sheet Metal Workers Local 100 and Asbestos Workers Local 24). At some point in April or May 2010, Engineering Contractors’ principals – Steven Griffith and Paul Parker – decided that they no longer wanted to operate as a union contractor. Griffith and Parker terminated all of Engineering Contractors’ union-represented employees on May 7, 2010. The two principals then shifted all of Engineering Contractors’ operations, including its equipment, vehicles, and many of its ongoing projects to a corporation called ECI of Washington, LLC (“ECI of Washington”). ECI of Washington continues to operate out of Engineering Contractors’ offices in Maryland and the District of Columbia, and perform the same work with the same ownership, management, supervision, business purpose, equipment, and customers. The only significant change is that, whereas Engineering Contractors’ workforce was union-represented, ECI of Washington’s workforce is non-union.

Plumbers Local 5 and Steamfitters Local 602 (along with Sheet Metal Workers Local 100 and the benefit funds affiliated with Asbestos Workers Local 24) filed unfair labor practice charges against Engineering Contractors and ECI of Washington. The Regional Director issued a complaint, which was litigated during a four-day hearing before Administrative Law Judge (“ALJ”) Bruce Rosenstein. ALJ Rosenstein issued his decision on September 1, 2011. *Engineering Contractors, Inc.*, No. JD-51-11 (“ALJD”).¹ The ALJ found that Engineering Contractors and ECI of Washington are alter egos and single employers. ALJD 6:47-50. He

¹ Citations to the ALJ’s decision will include the page and line numbers, *e.g.*, ALJD 6:47-50.

then found that the two alter egos violated Sections 8(a)(3) and (1) of the Act, 29 U.S.C. §§ 158(a)(3) & (1), by terminating Engineering's entire union-represented workforce. ALJD 11:36-37, 46-53; 12:5-9. The ALJ further found that both Engineering Contractors and ECI of Washington withdrew recognition of the unions, as well as failed and refused to comply with the collective bargaining agreements, in violation of Sections 8(a)(5) and (1) of the Act, 29 U.S.C. § 158(a)(5) & (1). ALJD 7:48-55 & at 8:5-6. The ALJ recommended a comprehensive make whole remedy, requiring Engineering Contractors and ECI of Washington reinstate the discharged employees, make those employees whole for their losses, recognize the unions, and abide by the existing collective bargaining agreements. ALJD 12:23-46; 13:5-55; 14:5-5-21.

Engineering Contractors and ECI of Washington filed exceptions on September 28, 2011. Section 102.46(b)(1) of the Board's Rules and Regulations sets forth four minimum requirements for regulations. 29 C.F.R. § 102.46 (b)(1). These requirements are the following: (1) state the specific question of fact, law or policy that is the basis of the objection; (2) identify the part of the ALJ's decision to which the objection is made; (3) designate the "precise citation of page of the portions of the record relied on" and (4) concisely state the grounds for the exception. In their exceptions, Engineering Contractors and ECI of Washington failed to follow the second and third requirements.

The Board has repeatedly refused to consider exceptions filed by respondents that fail to comply either with Section 102.46(b)(1) generally or with respect to particular subsections of that regulation, such the requirement to designate "by precise citation of page the portions of the record relied on" in subsection (iii). *See, e.g., BCE Constr., Inc.*, 350 NLRB 1047, 1047-48 (2007) (refusing to consider exceptions for failing, *inter alia*, to cite specific portions of the

record). Plumbers Local 5 and Steamfitters Local 602 respectfully submit that the Board should disregard all of the Respondents' exceptions, which, in any event, lack merit.

II. STATEMENT OF FACTS

Engineering Contractors, Inc. was a mechanical contractor in the Washington, D.C. metropolitan region. Engineering Contractors installed, serviced, and repaired plumbing, heating, ventilation and air conditioning systems, which also involved sheet metal and insulation work. It performed this work in commercial, educational and governmental buildings throughout the region. Tr. 56-60, 377; G.C. Exs. 37 & 38. The two owners of Engineering Contractors were Steven Griffith and Paul Parker. Tr. 372. Engineering Contractors had offices in Upper Marlboro, Maryland and the District of Columbia. G.C. Exs. 38 & 53. It had maintained all of its equipment and parked its vehicles at the Upper Marlboro office, where it also had conducted its operations. Tr. 62, 72, 142, 311-312.

A. Engineering Contractors, Inc.'s Collective Bargaining Relationships with Plumbers Local 5 and Steamfitters Local 602

Engineering Contractors, Inc. entered into collective bargaining agreements with Steamfitters Local 602 on November 13, 2008 (G.C. Ex. 48)² and with Plumbers Local 5 on December 18, 2008 (G.C. Ex. 45).³ Engineering Contractors executed letters of assent or letters of agreement with both Steamfitters Local 602 and Plumbers Local 5. G.C. Exs. 45 & 48. Pursuant to these letters of assent or agreement, Engineering Contractors delegated its bargaining authority to the Mechanical Contractors Association of Metropolitan Washington ("MCAMW").

² Citations to the record will be as follows. Citations to the transcript will include the page, *e.g.*, Tr. 13. Citations to the General Counsel's exhibits will be "G.C. Ex." Citations to exhibits offered by Plumbers Local 5 and Steamfitters Local 602 will be "CP P/S Ex."

³ Plumbers Local 5 and Steamfitters Local 602 will focus on the facts relating to their unfair labor practice cases, 5-CA-36213 and 5-CA-36214 respectively. The facts in the cases involving Sheet Metal Workers Local 100 and Asbestos Workers Local 24 are substantially similar.

Id. Engineering Contractors also bound itself to the existing collective bargaining agreements negotiated by the MCAMW with Plumbers Local 5 and Steamfitters Local 602. *Id.*

The letters of assent or agreement remain in effect unless and until Engineering Contractors provides written notice to both the unions and the MCAMW at least one hundred and fifty (150) days prior to the expiration of the collective bargaining agreements then in effect. G.C. Ex. 45 at 1; G.C. Ex. 48 at 1. At the time Engineering Contractors signed the letters of assent or agreement, the collective bargaining agreements between the MCAMW and both Plumbers Local 5 and Steamfitters Local 602 were effective until July 31, 2010. G.C. Exs. 46, 49. If Engineering Contractors wanted to terminate these agreements, it was required to submit the written notice by no later than March 3, 2010 (*i.e.*, 150 days prior to July 31, 2010). *Id.* Engineering Contractors did not submit any notice of termination to either Plumbers Local 5 or Steamfitters Local 602. Tr. 41, 88, 119, 382.

Consequently, under the terms of the letters of assent, Engineering Contractors is bound to the successor collective bargaining agreements. G.C. Exs. 45 at 1; G.C. Ex. 48 at 1. The successor agreement between the MCAMW and Plumbers Local 5 is effective from August 1, 2010 through July 31, 2014. G.C. Ex. 47. The successor agreement between the MCAMW and Steamfitters Local 602 is effective from August 1, 2010 through July 31, 2013. G.C. Ex. 101.

B. Engineering Contractors, Inc. Seeks to Escape its Contractual Obligations Through a Disguised Continuance

1. The Three Scenarios for Engineering Contractors' Future

In April 2010, the principals of Engineering Contractors – Steven Griffith and Paul Parker – engaged in an e-mail exchange about Engineering's operations. G.C. Ex. 113. Around this time, Engineering Contractors was having some financial issues. Tr. 554. The Respondent was also having difficulty on one of its projects, the Takoma Park Elementary School. The e-

mail exchange between Griffith and Parker focused on the Engineering Contractors' future. G.C. Ex. 113. The principals envisioned three scenarios for Engineering Contractors. *Id.* The first scenario was as follows:

Scenario 1

1)
Shut down Takoma Park, fire all job site personnel, remove tools and equipment, leave material. Take pictures of entire site, every room and hallway. Turn job over to bonding company.

WHY??

Because we cannot finance the \$200,000 in cash to complete and the \$25,000 ball valves and \$10,000 in duct cleaning. Also the \$40,000 Plus per week in payroll and we have to pay payroll taxes.

Collect \$350,000 Plus in receivables and pay Novak to File Chapter 7 for ECI^[4] and negotiate payroll taxes with the FEDs and the State. Also personal taxes for 2009.

ECI – Complete the remaining jobs, especially bonded jobs, collect receivables and pay plumbing and equipment suppliers. Use Union Labor to complete ECI jobs.

Vacate Upper Marlboro Offices & Warehouse.

Move to smaller MD office nearby. Maybe keep Sheetmetal Shop if under separate lease.

LLC^[5] needs to:

- a) Put vehicles, licenses, certifications in its name.
- b) Start health insurance
- c) General liability insurance, workmen's comp. etc.

G.C. Ex. 113. As Scenario 1 illustrates, Engineering Contractors would shut down one jobsite (*i.e.*, Takoma Park) but continue using its union-represented workforce to complete all of the

⁴ “ECI” is the acronym for Engineering Contractors, Inc., which was used by both principal and employee alike. When asked what “ECI” stood for in “ECI of Washington,” Griffith incredibly testified that the letters were random letters of the alphabet. Tr. 464.

⁵ “LLC” is a reference to ECI of Washington, LLC.

other jobs. In the meantime, the owners would work to get ECI of Washington, LLC to a point where it could be operational (*i.e.*, where it had insurance and assets). *Id.* The principals did not choose this option. Tr. 554-56.

The second scenario presented a stark contrast to the first option. G.C. Ex. 113. This scenario was as follows:

File Chapter 7 for ECI and the LLC, and personal, shut everything down, collect unemployment for a few months then get a regular job.

Paul and I need the following:

- a) Checks for 6-months pay
- b) Pay health insurance
- c) What are we going to do about Vehicles??

Id. Unlike the first scenario, Scenario 2 called for the complete cessation of operations and the layoff of everyone, including the principals. *Id.* Thereafter, Engineering Contractors, ECI of Washington and the principals would pursue Chapter 7 bankruptcy. *Id.* Like their employees, both Griffith and Parker would have to look for a new, “regular job.” *Id.* Both Griffith and Parker did not choose this option. Tr. 554-56.

Finally, there was the third scenario. Whereas the first scenario envisioned keeping most of the workforce (for a limited time) and the second scenario provided for the layoff of everyone, Scenario 3 provided as follows:

Try to finish Takoma, make further cuts in the office, do not pay taxes, bid all new jobs in the name of the LLC, hire non-union guys for the LLC or sub out work.

Try to pay-off the taxes over time, the same with union dues, the same of the bank.

Try to get as much completed on WMATA as possible.

Maybe still down-size offices and make more cuts on overhead.

G.C. Ex. 113. As it turns out, Scenario 3 was “just right” for the two principals. Griffith and Parker would keep their jobs (and not have to find “regular jobs”), while Engineering Contractors would layoff its entire, union-represented workforce. The two principals would thereafter use ECI of Washington to bid for work using a non-union workforce. *Id.* Thus, Griffith and Parker chose Scenario 3. Tr. 554-56.

2. *The Implementation of Scenario 3*

On Friday, May 7, 2010, Engineering Contractors informed its union-represented workforce that, as of Monday, May 10, 2010, Engineering Contractors was going “non-union.” Tr. 67, 89, 239-40, 328. The Respondent informed its employees that they could continue their employment, but they would not have their union representation. Tr. 144-45, 328-29, 425-27, 549-50. Given the proverbial Hobson’s Choice of the union representation or their jobs, the employees chose the former. They went to Engineering Contractors’ office to get their separation notices and final paychecks. G.C. Ex. 54. However, as they waited for their pink slips and final checks, Engineering Contractors’ employees encountered individuals at the Respondent’s office who were responding to job opening advertisements and submitting applications for work. Tr. 69. By the close of business on May 7, Engineering Contractors had terminated thirty-two (32) union-represented employees, despite the fact that the Respondent was actively working on several projects around the Washington, D.C. metropolitan region. Tr. 42, 154-55, 175, 239, 326-30, 331-32, 383-84.

The transition from Engineering Contractors to ECI of Washington, was nearly seamless, although unseemly. Although having been formed in November 2009, ECI of Washington had been merely a shell corporation, with \$5,000 in funds, no employees, and no ongoing operations. Tr. 435; CP P/S 4; G.C. Ex. 116. Beginning in April 2010 and continuing for at least eight

months thereafter, Engineering Contractors cut thirty (30) checks to ECI of Washington for a total of \$693,825.52. CP P/S Ex. 6.⁶ With the infusions of cash and a non-union workforce, ECI of Washington continued to perform the same work as Engineering Contractors, *viz.* plumbing, HVAC, pipefitting, insulation and sheet metal work. Tr. 275, 411-15, 438-50; G.C. Exs. 115 & 118. ECI of Washington's employees used the same equipment, tools, safety gear, and vehicles as had Engineering Contractors' employees. Tr. 62-64, 149-50, 261-64, 303, 463, 465-67. The non-union employees performing this work reported to the many of the same managers who had worked for Engineering Contractors. Tr. 12; G.C. Exs. 115 & 116. These managers reported to the same two officers as they had at Engineering Contractors: President Steven Griffith and Vice President Paul Parker. *Id.* The two principals were located in the same office, where ECI of Washington continued the same operations, dealing with the same suppliers and vendors, to service the same types of customers. *See, e.g.,* Tr. 301-03, 356-57, 449-50, 484, 587-88; GC Exs. 55, 82, 84, 87, 88, 89, 110, 122, 129, 130, 147, 148, 163; CP P/S Exs. 2 & 3.

In fact, the only difference between Engineering Contractors and ECI of Washington is that the former's workforce was union-represented and the latter's workforce was non-union. As laid out in Scenario 3 (G.C. Ex. 133), this was the specific objective for both Griffith and Parker. Any doubt about the principals' intention to transition from a union-represented workforce to a non-union one is erased by a job interview for a position with ECI of Washington, LLC. During this interview, Griffith specifically asked a plumber applicant, Elry McKnight, if he was a member of a union, *e.g.,* Plumbers Local 5. McKnight responded in the negative; and, thereafter,

⁶ These payments were ostensibly for the labor and material costs incurred by ECI of Washington to complete Engineering Contractors' projects. ECI submitted invoices for these costs; however those invoices totaled only \$569,223. CP P/S Ex. 7.

ECI of Washington hired McKnight to perform work at a school within the District of Columbia Public School System. Tr. 300-01.

C. The ALJ's Finds that Engineering Contractors and ECI of Washington Are "Alter Egos" that Have Committed Multiple Violations of the Act

In light of the foregoing evidentiary record, the Administrative Law Judge issued a decision finding that Engineering Contractors and ECI of Washington are alter egos and single employers. ALJD at 5:15-55, 6:5-50. The ALJ found common ownership, management, equipment, logos, vehicles, offices, vendors, and suppliers. *Id.* at 5-15. The ALJ also found that ECI of Washington assumed "a number of open contracts" signed by Engineering Contractors. *Id.* at 54-55. He also found a common labor policy based upon the use of identical employment forms and personnel policies/practices. *Id.* at 6:6-14. In the ALJ's view, these facts "conclusively establish" the alter ego criteria used by the Board. *Id.* at 6:47-50.

The ALJ found that the two alter egos engaged in a series of unfair labor practices. He determined that Engineering Contractors and ECI of Washington violated Sections 8(a)(5) and (1) by unlawfully withdrawing recognition from the unions, refusing to bargain and repudiating the collective bargaining agreements. ALJD at 7:16-55, 8:5-6. The ALJ further found that Engineering Contractors, Inc. and ECI of Washington violated Sections 8(a)(3) and (1) of the Act by terminating Engineering Contractors' union-represented workforce. ALJD at 9:22-52, 10:5-55, 11:5-36.

Based upon these violations, the ALJ recommended a remedy that requires Engineering Contractors and ECI of Washington to reinstate all of the discharged employees, make-whole those employees, and recognize the unions, and comply with the collective bargaining agreements. ALJD 12:23-46, 13:5-55, 14:5-24. The ALJ also recommended that Engineering and ECI of Washington make whole the employees hired after the discharge of the union-represented

employees by paying the difference between the union rates and the rates paid to the new employees. ALJD 14:43-51.

D. The Respondents File Exceptions that Fail to Comply with the Board’s Rule and Regulations

Engineering Contractors and ECI of Washington have filed exceptions from the ALJ’s decision, along with a supporting brief. The Respondents proffer seven, generally-worded exceptions. However, they have failed to identify the part of the ALJ’s decision to which the objections are made. They have also failed to cite the portions of the record upon which their exceptions are based. In sum, the Respondents failed to comply with Sections 102.46(b)(1)(ii) & (iii) of the Board’s Rules and Regulations, 29 C.F.R. §§ 102.46(b)(1)(ii) & (iii).

III. ARGUMENT

A. The Board Should Refuse to Consider the Exceptions Because of the Respondents’ Failure to Comply with Section 102.46(b)(1) of the Board’s Rules and Regulations

Section 102.46 (b)(1) of the Board’s Rules and Regulations sets forth the “minimum requirements” for filing exceptions from an ALJ’s decision. *Metropolitan Transp. Svcs., Inc.*, 351 NLRB 657, n.5 (2007). These requirements include: (i) setting forth the specific questions of procedure, fact, law or policy to which the exception is taken; (ii) identifying the part of the ALJ’s decision to which each objection is made; (iii) designating “by precise citation of page the portions of the record relied on” for each exception; and (iv) stating the grounds for each exception. 29 C.F.R. §§ 102.46(b)(1)(i)-(iv). Any exception that fails to comply with these requirements may be disregard. 29 C.F.R. § 102.46(b)(2).

The Board has repeatedly refused to consider exceptions that fail to comply with Section 102.46(b). *See Rome Elec. Sys., Inc.*, 356 NLRB No. 38, slip op. at 1 (2010); *BCE Constr., Inc.*, 350 NLRB 1047 (2007); *Universal Truss, Inc.*, 348 NLRB 733, n.2 (2006). More specifically,

the Board has refused to consider exceptions when the party fails to provide citations to the record, even if the party makes arguments in support of its exceptions. *BCE Constr., Inc.*, 350 NLRB at 1047-48.

The Respondents have failed to comply with Section 102.46 in two significant respects. First, Engineering Contractors and ECI of Washington fail to identify the parts of the ALJ's decision to which they are making their objections. Second, the two Respondents have failed to provide the "precise citation of page[s]" from the record upon which they base their objections.⁷

For example, the Respondents take exception to "[t]he ALJ's finding that the Respondents violated Sections 8(a)(1) and (3) of the Act because Respondents failed to satisfy their burden under the Wright Line test." Respondents' Exceptions at 2, ¶ 6. No citations to the ALJ's decision or the record are contained in the exceptions. In the supporting brief, the Respondents state the following:

The testimony by Paul Parker and Steve Griffith during the trial in this matter, which was not challenged by any witness put on by the general counsel and indeed was corroborated by several witnesses, was that the employees on the job site were performing substandard work, using the job site to train individuals who were not properly certified to do the work or simply doing no work at all. As a result, the significant cost overruns caused by these employees caused Engineering [Contractors] to go out of business and provided a tremendous disincentive to ECI [of Washington] to hire these employees."

Respondents' Brief in Support at 5. The Respondents failed to cite the pages of testimony by Paul Parker and Steven Griffith. They even failed to identify the "several witnesses" who supposedly "corroborated" the principals' testimony, let alone provide the citations to their

⁷ The Respondents cite to only one exhibit, G.C. Ex.122, at two different times in their brief. In light of the factual assertions made by the Respondents in their brief, as discussed in greater detail in the text, the citation to one exhibit twice in the brief is clearly insufficient under Section 102.46(b)(1)(iii) of the Board's Rules and Regulations.

testimony. Instead, they rely upon broad sweeping statements of “fact” and leave the task of finding the support for these claims to not just the opposing parties, but also to the Board itself.

Another example is found in the Respondents’ argument in support of its other exceptions. Respondents’ Br. in Supp. at 3. With respect to Exception 1, which is argued in Section A of the Respondent’s brief, the Respondents make reference to “repeated and undisputed testimony” without any citation to any transcript pages. *Id.* Likewise, with respect to Exceptions 2, 3 and 4, which are argued in Section B of the Brief in Support, the Respondents make reference to testimony by specific witnesses, such as Steven Griffith and Paul Parker, but fail to provide any citations to the record. *Id.* at 4. As for the remaining exceptions, Exceptions 6 and 7, the Respondents fail to cite to the record even though they make factual assertions supposedly based upon that record. *Id.* at 4-6.

Given the Respondents have failed to comply with Section 102.46(b), the Board should disregard the exceptions. *BCE Constr., Inc.*, 350 NLRB at 1047-48. Once the Respondents’ exceptions have been disregarded, there are no exceptions properly before the Board. Consequently, the Board should find that, pursuant to Section 10(c) of the Act, 29 U.S.C. § 160(c), the ALJ’s decision automatically becomes the decision of the Board become its findings, conclusions and order. *Hunter Metal Indus., Inc.*, 155 NLRB 430, 431 (1965) (finding, after disregard of non-compliant exceptions, that there were no timely exceptions and the ALJ’s findings, conclusions and recommendations of the ALJ automatically become the Board’s findings, conclusions, decision and order).

B. If the Board Considers the Respondents’ Exceptions, the Board Should Find that the Exceptions Lack Merit

If the Board decides to consider the Respondents’ exceptions, both Plumbers Local 5 and Steamfitters Local 602 respectfully submits that the Board should reject those exceptions as

lacking merit. Based upon the discussion of the facts in Section II *supra*, it is clear that the Respondents' exceptions lack any semblance of merit. *See Noel Corp.*, 315 NLRB 905, 909 (1994) (finding respondent violated Section 8(a)(3) by constructively discharging employees, *i.e.*, forcing employees to choose between union representation and their jobs); *Cedar Valley Corp.*, 302 NLRB 823, 830 (1991), *enforced*, 977 F.2d 1211 (8th Cir. 1992) (finding respondent violated Sections 8(a)(5) and (1) by withdrawing recognition and repudiating agreements with unions in Section 8(f) context); *Advance Elec., Inc.*, 268 NLRB 1001, 1002 (1984), *enforced as modified*, 748 F.2d 1001 (5th Cir. 1984) (finding alter ego status where respondents share substantially identical management, business purpose, operations, equipment, customers, supervision and ownership).

Both Plumbers Local 5 and Steamfitters Local 602 note that Counsel for the General Counsel is submitting an answering brief providing a detailed response to these objections. Rather than repeat those arguments, Plumbers Local 5 and Steamfitters Local 602 incorporates by reference the brief filed by Counsel for the General Counsel as if fully set forth herein.

C. Having Failed to File Any Exceptions to the ALJ's Recommended Remedy and Order, the Board Should Adopt that Remedy and Order as its Own

Finally, Engineering Contractors and ECI of Washington have not proffered any exceptions to the ALJ's recommended remedy and proposed order. Given the ALJ properly found that the Respondents violated Sections 8(a)(5), (3) and (1) of the Act, the Board should adopted the ALJ's proposed remedy and order.

IV. CONCLUSION

Accordingly, for the foregoing reasons, Plumbers Local 5 and Steamfitters Local 602 respectfully request that the NLRB dismiss the exceptions filed by Engineering Contractors and

ECI of Washington, affirm the ALJ's decision in its entirety, and adopt the ALJ's recommended remedy and order.

Respectfully submitted,

DATED: October 12, 2011

By:



Keith R. Bolek
O'DONOGHUE & O'DONOGHUE LLP
4748 Wisconsin Avenue, NW
Washington, D.C. 20016
(202) 362-0041

Counsel for Plumbers Local 5
and Steamfitters Local 602

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Post Hearing Brief was served electronically via e-mail upon the following on the 12th of October, 2011:

Sean Marshall
Jaime Cohn
National Labor Relations Board
Region 5
103 South Gay Street, 8th Floor
Baltimore, MD 21202

Jon Newman
Sherman, Dunn, Cohen, Leifer & Yellig
900 7th Street, NW, Suite 1000
Washington, D.C. 20001

Mayoung Nham
Mooney, Green Saindon, Murphy
and Welsch
1920 L Street, NW, Suite 400
Washington, D.C. 20036

Ken Gauvey
Offit Kurman
8 Park Center Court, Suite 200
Owings Mills, MD 21117



Keith R. Bolek