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Attorneys for Employer
EKO PAINTING, INC.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA

EKO PAINTING, INC.

Employer,

and

INTERNATIONAL UNION OF
PAINTERS AND ALLIED TRADE,
PAINTERS UNION 1791,

Petitioner.

Case No. 20-RC-082348

EKO PAINTING, INC.'S REQUEST FOR
REVIEW OF REGIONAL DIRECTOR'S
DECISION, FILED JUNE 29, 2012;
DECLARATION OF KRISTI L. ARAKAKI;
EXHIBITS "A" - "G"; CERTIFICATE OF
SERVICE.

EKO PAINTING, INC.'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S
DECISION, FILED JUNE 29, 2012

Employer EKO PAINTING, INC. ("Eko") by and through its attorneys, O'Connor, Playdon & Guben, LLP, hereby, submits this request for review of the decision issued by Regional Director, Joseph F. Frankl, on June 29, 2012, attached hereto as Exhibit "A". Upon information and reasonable belief, it is Eko's position that the INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, PAINTERS LOCAL UNION 1791, AFL-CIO's ("Union") did not make a

proper showing of interest on or around the time of the filing of its petition for certification, filed June 4, 2012.

I. FACTS

At the hearing held on June 18, 2012, Eko orally requested that NLRB hearings officer, Katrina Woodcock (“Ms. Woodcock”) perform a “card count” to determine whether the Union had representation cards from at least 30 percent of Eko’s employees that would be necessary for further action on the Union’s petition for certification.

Ms. Woodcock indicated that a “card count” had been performed and that the Union had produced representation cards from at least 30 percent of Eko’s employees. Ms. Woodcock refused to state the number of representation cards produced by the Union or what percentage of Eko employees had signed representation cards.

However, Ms. Woodcock’s representation appears incorrect and/or disingenuous as she claimed to have not received from Eko the employee list identifying Eko’s 40 current employees in the bargaining unit as of the payroll period preceding the June 4, 2012 filing of petition for certification by the Union. Eko submitted the aforesaid list to the NLRB in the week prior to the June 18, 2012 hearing. A copy of the list and the email it was attached to is attached hereto as Exhibit “B”.

Because Ms. Woodcock claimed to have not received the aforesaid employee list from Eko, Eko provided a copy to Ms. Woodcock at the hearing.

Doubting Ms. Woodcock’s representation that a card count had been performed, on June 27, 2012, Eko’s counsel sent a letter to Ms. Woodcock,

requesting that a card count be conducted. The letter and the email it was included in is attached hereto as Exhibit "C".

As shown in the email response to Eko's letter, Ms. Woodcock did not contend as she had at the June 18, 2012 hearing that a card count had been conducted. Rather, she simply stated that she would forward the request to appropriate personnel at NLRB. See response of Ms. Woodcock dated June 27, 2012, attached hereto as Exhibit "D".

On July 3, 2012, NLRB investigator Scott Hovey called Eko's counsel, Kristi Arakaki, and informed her that pursuant to Eko's letter of June 27, 2012, a card count had been conducted and that the Union had produced representation cards from at least 30 percent of Eko's current employees.

Eko's counsel sent an email to Mr. Hovey, on that same day, July 3, 2012, to confirm Mr. Hovey's express statement that a proper card count had been performed. See Email correspondence of July 3, 2012 between Kristi L. Arakaki and Mr. Hovey, attached hereto as Exhibit "E"

However, in a response email, Mr. Hovey admitted that in performing the card count, the NLRB, had used an employee list submitted by Eko to the NLRB on June 27, 2012 in which all of the names of the Eko employees had been redacted. See Exhibit "E".

Eko's counsel informed Mr. Hovey that use of the list with redacted names was improper because it is impossible to perform a valid card count when the names on the employee list are unknown and cannot be matched to a corresponding name on the representation card. See Exhibit "E". Furthermore, Eko's counsel informed Mr. Hovey that Eko's request for a card count had

specifically instructed the NLRB to use the employee list that Eko submitted to the NLRB on June 15, 2012 which contained the complete names of all of Eko's employees.

II. DISCUSSION

The above-facts, including the apparently incorrect and disingenuous statements made by Region personnel, show that the Region has heretofore, failed to perform a valid card count to determine whether the Union has the requisite showing of interest to proceed to a representation election. First, the Region, through Ms. Woodcock, represented on June 18, 2012 that a card count was performed. However, either the Region did not perform a card count or it performed a card count but failed to use the accurate list of Eko employees as of the pay period preceding June 4, 2012, because Ms. Woodcock claimed at the hearing that the Region had never received the aforesaid list submitted by Eko. The list was clearly submitted by Eko prior to the hearing as shown in Exhibit "B".

If the Region used an employee list constructed by the Union, such list was incorrect as the Union was under the mistaken impression that nine individuals were currently employed by Eko when in fact they were not. See Hearing Transcript at p.11, ¶¶ 9-18. Thus, the Union initially contended that Eko's employee list was erroneous because it failed to identify those nine individuals. See id. (Ms. Woodcock stated that one of the issues in dispute was the fact that nine employees were not listed). However, at the hearing, Warren Eko informed the Union that the aforesaid nine individuals were no longer employed by Eko. Clearly, representation cards from these nine individuals, no

longer employed by Eko at the time of the pay period preceding June 4, 2012, should not be counted in determining the showing of interest. It does not appear that the Region has excluded these nine individuals as it was admittedly, improperly, and inexplicably comparing representation cards against a list of employees where all names of the employees had been redacted. Furthermore, the Union's own petition for certification shows that it incorrectly believed the bargaining unit to be comprised of only 34 individuals. Any list of employees provided by the Union to the Region would be inaccurate because it would have identified 34 individuals instead of 40, and 9 of those 34 individuals would be persons that no longer worked for Eko at the time of petition filing. Hence, any card count based on the Union's list would be grossly inaccurate and meaningless.

Second, Mr. Hovey admitted the Region used a list with redacted names in performing the card count – an act that makes absolutely no sense given the fact that a card count requires names on representation cards to be matched with corresponding names on an accurate employee list in order to be counted. Less than an hour after Eko's counsel informed Mr. Hovey of his error (see Exhibit "E"), Mr. Hovey called Eko's counsel and then claimed that the Region had actually used the correct employee list (i.e. the list submitted by Eko on June 15, 2012) in doing the card count. However, Mr. Hovey's later statement appears completely disingenuous, especially in light of the fact that it completely contradicts the earlier statement, in writing that he made about what list was used in the card count.

Third, several Eko employees rescinded the representation cards that

they signed as shown in the declarations attached to Eko's Petition to Dismiss the Union's Petition for Certification, filed June 12, 2012. Upon information and belief, the Region has not properly investigated this issue. It appears that the Region has not bothered to contact many of the aforesaid employees to determine if they actually wish to rescind the representation cards they signed on the basis of fraudulent inducement and misrepresentation. Moreover, the Region apparently continues to count the rescinded and invalidated cards toward the showing of representation (assuming that the Region ever performed a card count at all).

Based on the foregoing, Eko is concerned about the contradictory and disingenuous statements made by Region personnel and about the possibility of bad faith and improper/unlawful conduct regarding the issue of the showing of representation. The facts above indicate that (1) either a card count was never performed by the Region to determine the requisite showing of interest in an election by Eko employees or (2) a card count was performed without using the unredacted list of Eko employees employed as of the pay period preceding June 4, 2012. Therefore, Eko respectfully asks this Board to review the Region's showing of interest determination to ensure that the Union has made a proper showing of interest necessary for the direction of an election.

DATED: Honolulu, Hawaii, July 13, 2012.



CID H. INOUYE
KRISTI L. ARAKAKI
Attorneys for Employer
EKO PAINTING, INC.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA

EKO PAINTING, INC.

Employer,

and

INTERNATIONAL UNION OF
PAINTERS AND ALLIED TRADE,
PAINTERS UNION 1791,

Petitioner.

Case No. 20-RC-082348

DECLARATION OF KRISTI L. ARAKAKI

KRISTI L. ARAKAKI hereby declares as follows:

1. I am one of the attorneys for Employer EKO PAINTING, INC. (“Eko”) in the above-entitled action. I am licensed to practice law before all courts in the State of Hawaii and am competent to testify to the matters set forth herein.

2. At the hearing held on June 18, 2012 in the above-entitled matter, I orally requested that NLRB hearings officer, Katrina Woodcock (“Ms. Woodcock”) perform a “card count” to determine whether the Union had representation cards from at least 30 percent of Eko’s employees that would be necessary for further action on the Union’s petition for certification.

3. At the aforesaid hearing, Ms. Woodcock indicated that a “card count” had been performed and that the Union had produced representation cards from at least 30 percent of Eko’s employees. Ms. Woodcock refused to state the number of representation cards produced by the Union or what percentage of Eko employees had signed representation cards.

4. However, Ms. Woodcock's claimed to have not received from Eko the employee list identifying Eko's 40 current employees in the bargaining unit as of the payroll period preceding the June 4, 2012 filing of petition for certification by the Union.

5. On July 3, 2012, NLRB investigator Scott Hovey called me and stated that pursuant to Eko's letter of June 27, 2012, a card count had been conducted and that the Union had produced representation cards from at least 30 percent of Eko's current employees.

6. Attached hereto as Exhibit "A" is a true and correct copy of the Decision and Direction of Election issued by the Regional Director on June 29, 2012.

7. Attached hereto as Exhibit "B" is a true and correct copy of the list of employees employed by Eko as of the pay period preceding June 4, 2012, with phone number redaction. The phone numbers have been redacted here for privacy purposes but were included in unredacted form in the list Eko submitted to the NLRB. The email shows 40 Eko employees and was submitted to NLRB investigator, Scott Hovey on June 15, 2012.

8. Attached hereto as Exhibit "C" is a true and correct copy of Eko's written request of June 27, 2012 to the NLRB for a card count.

9. Attached hereto as Exhibit "D" is a true and correct copy of the response of Ms. Woodcock regarding Eko's written request to the NLRB for a card count.

10. Attached hereto as Exhibit "E" is a true and correct copy of email correspondence exchanged between myself and Mr. Hovey on July 3,

2012.

11. Attached hereto as Exhibit "F" is a true and correct copy of an excerpt from the transcript of the hearing in the above-entitled matter on June 18, 2012.

12. Attached hereto as Exhibit "G" is a true and correct copy of the Union's petition for certification filed herein on June 4, 2012, showing its incorrect assumption that there were only 34 individuals in the proposed bargaining unit instead of 40.

I declare under penalty of perjury under the laws of the State of Hawaii that the foregoing is true and correct to the best of my knowledge and belief.

Executed: Honolulu, Hawaii, July 13, 2012.



KRISTI L. ARAKAKI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

EKO PAINTING, INC

Employer

and

Case 20-RC-082348

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, PAINTERS UNION
LOCAL 1791

Petitioner

DECISION AND DIRECTION OF ELECTION

Eko Painting, Inc. (Employer) is a Hawaii corporation providing construction services on the Island of Oahu, Hawaii. By its petition, International Union of Painters and Allied Trades, Painters Union Local 1791 (Petitioner) seeks to represent a unit comprised of all foremen, journeymen, and apprentice painters and allied trades employees of the Employer; excluding all other employees, including estimators, supervisors, shop persons, office managers, secretaries, contractor/president, confidential employees and guards and/or watchpersons, as defined in the Act. There are about 40 employees in the petitioned-for unit.

At the time of the hearing,¹ there apparently existed a dispute between the parties as to whether some or all of the foremen employed by the Employer are statutory supervisors. However, the post-hearing briefs of the parties show that the parties now agree that the foremen are not statutory supervisors and should be included in the unit. No other issues are disputed by the parties. As the record amply supports that the

¹ The Hearing Officer who conducted the hearing was Katrina H. Woodcock.

Decision and Direction of Election
Eko Painting, Inc.
Case 20-RC-082348

foremen are not statutory supervisors, and there is no longer any dispute between the parties as to the employee status of the foremen, I so find and include them in the unit. The appropriateness of the unit is not in dispute, and I find that the petitioned-for unit, a traditional craft group sharing a substantial community of interest, is an appropriate unit. Accordingly, I am directing an election in the petitioned-for unit.

Stipulations. The parties stipulated, and I find, that the Employer is engaged in the construction industry. The parties further stipulated, and I find, that the Supervisor/Quality Control Officer/Safety Officer, Steve Latino, is excluded from the unit as a statutory supervisor, and that the following individuals are also excluded from the unit: President Warren H. Eko, Estimators Jason Sasaki and Luis Fernandez, Office Manager Sujin Tripp, Human Resources/Accounts Administrator Danella Diamond, Office Administrator Lanae Clark, and an administrative assistant, Cyrus (last name not disclosed).

Based on the entire record in this proceeding, I conclude and find as follows:

- 1) The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- 2) The Employer is an employer as defined in Section 2(2) of the Act, and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
- 3) The Petitioner is a labor organization within the meaning of the Act.
- 4) A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
- 5) The following employees of the Employer constitute an appropriate unit for the purposes of collective-bargaining within the meaning of the Act:

All foremen, journeymen, and apprentice painters and allied trades employees of the Employer; excluding all other employees, including estimators, supervisors, shop persons, office managers, secretaries, contractor/president, confidential employees and guards and/or watchpersons, as defined in the Act.

Decision and Direction of Election
Eko Painting, Inc.
Case 20-RC-082348

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Painters and Allied Trades, Painters Union Local 1791 or by no union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility²

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are all employees in the unit if they have been employed for 30 working days or more within the twelve months preceding the eligibility date for the election or if they have had some employment in those twelve months and have been employed for 45 working days or more within the twenty-four month period immediately preceding the eligibility date. Also eligible are employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, eligible to vote are those employees who worked a minimum of fifteen (15) days during either of the quarters immediately preceding the date of this Decision. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for

² The parties stipulated that the Employer is a construction industry contractor and I am therefore using the *Daniel/Steiny* eligibility formula. See *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction Company, Inc.*, 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967). Petitioner argued for the use of the *Daniel/Steiny* formula and the Employer raised no issue in this regard.

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Eko Painting, Inc.
Case 20-RC-082348

cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Subregion 37 Office, 300 Ala Moana Blvd., Rm. 7-245, P.O. Box 50208, Honolulu, Hawaii 96850 on or before **July 6, 2012**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,³ by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Because the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by electronic filing, facsimile

³ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.

Decision and Direction of Election
Eko Painting, Inc.
Case 20-RC-082348

or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

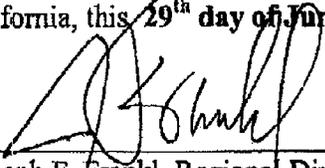
C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **July 13, 2012**. The request may be filed electronically through the Agency's web site, www.nlr.gov,⁴ but may not be filed by facsimile.

DATED AT San Francisco, California, this 29th day of June 2012.



Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

⁴ To file the request for review electronically, go to www.nlr.gov, select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.

Kristi L. Arakaki

From: Kristi L. Arakaki
Sent: Friday, June 15, 2012 4:16 PM
To: 'Hovey Jr., Scott E.'
Subject: Eko Painting v Union - Employee List
Attachments: Eko-EmployeeList.pdf

Dear Scott,

Attached is the list of Eko employees for the proposed bargaining unit including all journeymen, foremen, and apprentices.

We request that this list be used only by the NLRB for its investigation purposes.

Regards,
Kris

Kristi L. Arakaki , Esq.
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EXHIBIT "B"

	First Name	Last Name	Position	Contact No.
35	Jeffson	Aikau	A	[REDACTED]
21	Frederico	Algono Jr.	J	[REDACTED]
17	Jhonrie	Ancheta	A	[REDACTED]
29	Mark	Ancheta	J	[REDACTED]
1	Larry	Ancheta Jr	F	[REDACTED]
4	Diomedes	Aquino	J	[REDACTED]
8	Robert	Burgess	J	[REDACTED]
23	Jeffery	Canape	J	[REDACTED]
38	Duncan	Carineo	A	[REDACTED]
15	Ariel	Cordon	A	[REDACTED]
32	Joseph	Correa	A	[REDACTED]
36	Victor	Correale	J	[REDACTED]
33	Geitchy-Stuart	Eperiam	A	[REDACTED]
22	Arne	Flora	A	[REDACTED]
28	Jared	Funtanilla	A	[REDACTED]
13	Noel	Gaviola	A	[REDACTED]
39	Darrin	Gibu	J	[REDACTED]
37	Kyle	Hoyohoy	A	[REDACTED]
40	Ranier	Ines	A	[REDACTED]
25	Randell	Lagpacan	A	[REDACTED]
27	Robert	Lawrence	A	[REDACTED]
20	Walter	Magno Jr	J	[REDACTED]
7	Patrick	Manggur	F	[REDACTED]
2	Les	Mar Sr.	F	[REDACTED]
34	Joeseeph	Mongkeya	A	[REDACTED]
31	Randy	Nakayama	J	[REDACTED]
26	Michael	Obra	A	[REDACTED]
14	Gerald	Pacorsa	A	[REDACTED]
16	Rosario	Pascual	J	[REDACTED]
3	Jack	Paul	F	[REDACTED]
18	Karen	Paulino	A	[REDACTED]
11	Ke'ale	Peahi-Piiohia	A	[REDACTED]
19	Daniel	Rapadas	J	[REDACTED]
6	Nardo	Reyes Jr.	J	[REDACTED]
12	Joseph	Saloricman	F	[REDACTED]
9	Cayetano	Siclot	J	[REDACTED]
10	Georgi-Anne	Tali	J	[REDACTED]
5	Louei	Tejada	J	[REDACTED]
30	Jonathan	Teocson	F	[REDACTED]
24	Kevyn	Vierra	A	[REDACTED]

A = Apprentice
J = Journeyman
F = Foreman

EXHIBIT

Kristi L. Arakaki

From: Kristi L. Arakaki
Sent: Wednesday, June 27, 2012 8:00 PM
To: 'Woodcock, Katrina'
Subject: Eko Painting - Request for Card Count and Election Date (No. 20-RC-082348)
Attachments: 06-27-12-Ltr-to-NLRB.pdf; Letter-Attachments.pdf

Dear Ms. Woodcock,

Attached hereto please find Eko Painting's Request for a Card Count and for a setting of the election date.

Regards,
Kris Arakaki

Kristi L. Arakaki , Esq.
O'CONNOR PLAYDON & GUBEN LLP
Pacific Guardian Center – Makai Tower
733 Bishop St. – 24th Floor
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EXHIBIT "C"

7/13/2012

O'CONNOR PLAYDON & GUBEN LLP

Dennis E. W. O'Connor
George W. Playdon, Jr.*
Jerrold K. Guben
W. Thomas Fagan
Michael J. McGuigan
James A. Kawachika*
Cid H. Inouye
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Charles S. O'Neill, Jr., LL.M.
Jeffery S. Flores
Kristi L. Arakaki
Lahela H. F. Hite

COUNSEL
Dennis J. Hwang

June 27, 2012

E-mail and U.S. Mail

Katrina H. Woodcock, Esq.
National Labor Relations Board
300 Ala Moana Blvd.
Room 7-245
Honolulu, Hawaii 96850-0001

RE: Eko Painting Inc. v. Internat'l Union of Painters
Case No. 20-RC-082348

Dear Ms. Woodcock:

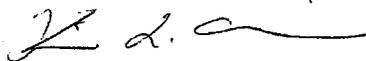
Eko Painting, Inc. ("Eko") requests that a card count be conducted by the NLRB to determine whether the Union has demonstrated the showing of interest required by law in order to proceed with the instant case. The card count should be based on the employee list submitted as the first exhibit by Eko at the hearing held on June 18, 2012, which is identical to the list submitted to the NLRB on June 15, 2012.

Additional lists are attached hereto for the reference of the NLRB, and include: (1) a list of current Eko employees, (2) a list of Eko employees with 30 working days during the preceding 12 months, and (3) a list of Eko employees with 45 working days within the preceding 24 months.

Eko also requests that the NLRB set the election for Friday, July 6, 2012 in the event that the card count results demonstrate a showing of interest of 30 percent or greater.

Please let me know the results of the card count and the scheduled date of the election.

Very truly yours,



Kristi L. Arakaki

Current Employees as of June 4th, 2012

	Employee#	First Name	Last Name	Hire Date	Postion
1				08/28/1997	F
2				09/07/1999	F
3				11/10/2000	F
4				07/24/2001	J
5				02/13/2003	J
6				03/06/2006	J
7				04/24/2006	F
8				01/29/2007	J
9				02/26/2007	J
10				01/03/2008	J
11				01/21/2008	A
12				06/23/2008	F
13				03/30/2009	A
14				12/21/2009	A
15				02/24/2010	A
16				07/19/2010	J
17				08/16/2010	A
18				09/27/2010	A
19				09/27/2010	J
20				11/19/2010	J
21				12/13/2010	J
22				01/03/2011	A
23				04/19/2011	J
24				04/19/2011	A
25				04/25/2011	A
26				06/28/2011	A
27				07/25/2011	A
28				08/22/2011	A
29				09/06/2011	J
30				01/30/2012	F
31				03/13/2012	J
32				04/09/2012	A
33				04/09/2012	A
34				04/09/2012	A
35				04/30/2012	A
36				05/01/2012	J
37				5/31/2012	A
38				5/31/2012	A
39				5/31/2012	J
40				5/31/2012	A

Employees with 30 working days within the preceding 12 months

	Employee#	First Name	Last Name	Hire Date	Inactive	Position
1				05/27/2011	08/26/2011	A
2				08/11/2008	09/15/2011	A
3				01/02/2008	09/23/2011	A
4				09/27/2010	10/01/2011	J
5				12/18/2006	11/21/2011	A
6				04/10/2011	01/01/2012	J
7				05/03/2011	01/06/2012	A
8				07/13/2010	01/10/2012	A
9				09/13/2011	01/10/2012	J
10				04/19/2011	01/10/2012	J
11				04/21/2011	01/10/2012	A
12				04/01/2009	01/10/2012	J
13				11/24/2008	01/13/2012	F
14				02/11/2010	02/17/2012	A
15				01/04/2012	03/02/2012	A
16				04/25/2011	03/05/2012	J
17				03/31/2009	03/06/2012	F
18				09/13/2011	03/30/2012	A
19				08/16/2010	04/30/2012	J
20				11/03/2008	04/30/2012	J
21				03/17/2008	5/25/2012	F
22				07/26/2010	5/25/2012	J
23				10/04/2011	5/25/2012	J
24				05/03/2012	5/30/2012	A
25				06/21/2011	5/25/2012	A
26				04/21/2011	5/22/2012	A
27				09/13/2010	5/30/2012	J

Employees with 45 working days within the preceding 24 months

	Employee#	First Name	Last Name	Hire Date	Inactive	Position
1				05/18/2010	08/27/2010	J
2				04/19/2010	09/14/2010	J
3				05/10/2010	09/23/2010	A
4				07/19/2010	11/01/2010	J
5				07/21/2008	12/17/2010	A
6				11/23/2010	01/21/2011	J
7				02/10/2010	01/21/2011	A
8				06/28/2010	02/02/2011	A
9				08/03/2010	03/09/2011	J
10				05/27/2011	08/26/2011	A
11				08/11/2008	09/15/2011	A
12				01/02/2008	09/23/2011	A
13				09/27/2010	10/01/2011	J
14				12/18/2006	11/21/2011	A
15				04/10/2011	01/01/2012	J
16				05/03/2011	01/06/2012	A
17				07/13/2010	01/10/2012	A
18				09/13/2011	01/10/2012	J
19				04/19/2011	01/10/2012	J
20				04/21/2011	01/10/2012	A
21				04/01/2009	01/10/2012	J
22				11/24/2008	01/13/2012	F
23				02/11/2010	02/17/2012	A
24				01/04/2012	03/02/2012	A
25				04/25/2011	03/05/2012	J
26				03/31/2009	03/06/2012	F
27				09/13/2011	03/30/2012	A
28				08/16/2010	04/30/2012	J
29				11/03/2008	04/30/2012	J
30				03/17/2008	5/25/2012	F
31				07/26/2010	5/25/2012	J
32				10/04/2011	5/25/2012	J
33				05/03/2012	5/30/2012	A
34				06/21/2011	5/25/2012	A
35				04/21/2011	5/22/2012	A
36				09/13/2010	5/30/2012	J

Kristi L. Arakaki

From: Woodcock, Katrina [Katrina.Woodcock@nlrb.gov]
Sent: Wednesday, June 27, 2012 8:11 PM
To: Kristi L. Arakaki
Cc: Hovey Jr., Scott E.; Cestare, Thomas W.
Subject: Re: Eko Painting - Request for Card Count and Election Date (No. 20-RC-082348)
Ms. Arakaki,

I will forward this to the appropriate individuals on the showing of interest issue. Regarding the hearing date, that is determined among the parties sometime within 30 days after the issuance of the Regional Director issues his decision in the matter. That will also be forwarded to those involved in that decision. I was only the hearing officer and as such I am not involved in further logistical issues.

Regards,
Katrina Woodcock

Sent from my iPhone

On Jun 27, 2012, at 8:00 PM, "Kristi L. Arakaki" <KLA@opglaw.com> wrote:

Dear Ms. Woodcock,

Attached hereto please find Eko Painting's Request for a Card Count and for a setting of the election date.

Regards,
Kris Arakaki

Kristi L. Arakaki , Esq.
O'CONNOR PLAYDON & GUBEN LLP
Pacific Guardian Center – Makai Tower
733 Bishop St. – 24th Floor
Honolulu HI 96813

Telephone: (808) 524-8350
Fax: (808) 531-8628
Email Address: kla@opglaw.com
Website: www.opglaw.com

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<06-27-12-Ltr-to-NLRB.pdf>

EXHIBIT "D"

<Letter-Attachments.pdf>

Kristi L. Arakaki

From: Kristi L. Arakaki
Sent: Tuesday, July 03, 2012 3:33 PM
To: 'Hovey Jr., Scott E.'
Subject: RE: Eko Painting - Case No. 20-RC-082348

Mr. Hovey,

Eko's June 27, 2012 letter stated that the employee list submitted on June 15, 2012 to the NLRB (a copy of which was submitted into evidence at the June 18, 2012 hearing) should be used for the card count. **NONE OF THE NAMES OF THE EMPLOYEES ON THAT LIST WERE REDACTED.**

Use of a list with redacted names for the card count is not appropriate because if such list is used, the NLRB will be unable to determine whether the name of a person on any given representation card corresponds to the name of an individual identified as a current Eko employee on Eko's list of employees.

The hearing transcripts show that the Union was operating under the mistaken belief that nine individuals were employees of Eko at the time of the petition filing, when in fact, those nine individuals were not Eko employees. Thus, if the NLRB's determination that the requisite 30% showing of interest was met, based upon the use of those nine representation cards, and any other representation cards from persons whose names are not on the employee list submitted to the NLRB on June 15, 2012, the results of the card count are not valid.

Regarding point #4, please let us know whether the names of the individuals alleging fraud by the Union in securing the representation cards were or were not excluded in the NLRB's card count. In our conversation I believe you stated that these individuals were excluded from the count. However, your email response below now indicates otherwise.

Thank you,
 Kris

From: Hovey Jr., Scott E. [mailto:Scott.HoveyJr@nlrb.gov]
Sent: Tuesday, July 03, 2012 2:33 PM
To: Kristi L. Arakaki
Subject: RE: Eko Painting - Case No. 20-RC-082348

As to point #2 & #3, based on the employee eligibility list which Eko provided on June 27, 2012, in which **ALL NAMES OF EMPLOYEES WERE REDACTED** the Union had a sufficient showing of interest. As to point #4, as a result of our investigation into the allegations of fraud or impropriety in the Union's showing of interest it is determined that the Union has a sufficient showing of interest.

From: Kristi L. Arakaki [mailto:KLA@opglaw.com]
Sent: Tuesday, July 03, 2012 2:20 PM
To: Hovey Jr., Scott E.
Subject: Eko Painting - Case No. 20-RC-082348

Dear Mr. Hovey,

This message confirms the phone conversation we had earlier today where you stated the following:

- 1) pursuant to Eko's letter of 06-27-12 to the NLRB requesting a card count, the NLRB performed a card count to determine if the Union had the showing of interest required by law;
- 2) the card count was performed using the list provided by Eko which lists Eko's 40 current employees for the proposed bargaining unit as of the date of June 4, 2012;

EXHIBIT "E"

7/13/2012

- 3) the Union produced representation cards from at least 30 percent of the individuals on the aforesaid list;
- 4) the Union produced representation cards from at least 30 percent of the individuals on the aforesaid list, even if the representation cards submitted by the Eko workers contending that the cards were obtained fraudulently and improperly as described in Eko's Motion to Dismiss the Union's Petition for Certification, filed herein on June 12, 2012, are excluded from the card count.

You also mentioned that the election must occur on a date between July 24 and July 31, 2012 and that you were requesting Eko's preferred date for the election. I stated that I would get back to you on the election date issue after discussing with Eko.

Please let me know if anything above is not accurate.

Thank you,
Kris

Kristi L. Arakaki , Esq.
O'CONNOR PLAYDON & GUBEN LLP
Pacific Guardian Center – Makai Tower
733 Bishop St. – 24th Floor
Honolulu HI 96813

Telephone: (808) 524-8350
Fax: (808) 531-8628
Email Address: kla@opglaw.com
Website: www.opglaw.com

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 20, SUBREGION 37

In the Matter of:

EKO PAINTING, INC.,

Employer,

and

**INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, PAINTERS UNION
LOCAL 1791,**

Petitioner.

Case No. **20-RC-082348**

The above-entitled matter came on for hearing pursuant to notice, before **KATRINA H. WOODCOCK**, Hearing Officer, at the **National Labor Relations Board, Prince Jonah Kuhio Kalaniana'ole Federal Building, 300 Ala Moana Boulevard, Room 7-241, Honolulu, Hawaii**, on **Monday, June 18, 2012**, at **10:00 a.m.**

EXHIBIT "F"

Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, MD 21409
(410) 974-0947

1 journeymen, and apprentice painters and allied trades of Eko
2 Company, Inc.

3 HEARING OFFICER WOODCOCK: And also at the beginning,
4 all full-time and regular part-time?

5 MR. TAKAHASHI: We are amending it to state as we have
6 stated it.

7 HEARING OFFICER WOODCOCK: So the Union's proposed unit
8 is all foremen, journeymen, and apprentice painters and
9 allied trades of Eko Company, Inc.?

10 MR. TAKAHASHI: Correct.

11 HEARING OFFICER WOODCOCK: Okay. So as we discussed in
12 off-the-record discussions prior to opening of this hearing,
13 there are remaining issues regarding unit composition. My
14 understanding is there are six individuals listed on this
15 employee list that are potentially supervisors.
16 Additionally, there's a number, I believe nine employees not
17 listed, that may potentially be considered employees or not
18 employees; the status is currently unknown. And that
19 additionally, there's a number of approximately 6 to 12
20 additional people on the list whose actual status regarding
21 what their position is, is in question.

22 MR. TAKAHASHI: Correct.

23 HEARING OFFICER WOODCOCK: Is that correct? Okay.

24 This is an evidentiary hearing, and as such it is my
25 duty to make sure that all relevant facts are in the record.

DO NOT WRITE IN THIS SPACE

Case No. 20-RC-082348 Date Filed June 4, 2012

PETITION

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

- 1. PURPOSE OF THIS PETITION (if box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
[X] RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
[] RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
[] RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
[] UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
[] UC-UNIT CLARIFICATION- A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) [] In unit not previously certified. [] In unit previously certified in Case No.
[] AC-AMENDMENT OF CERTIFICATION- Petitioner seeks amendment of certification issued in Case No. Attach statement describing the specific amendment sought.

2. Name of Employer Eko Painting, Inc. Employer Representative to contact Warren H. Eko, President Tel. No. (808) 591-9882

3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 3363 Campbell Avenue, Honolulu, Hawaii 96815 Fax No. (808) 591-9872

4a. Type of Establishment (Factory, mine, wholesaler, etc.) Painting 4b. Identify principal product or service Painting and concrete restoration Cell No. e-Mail

5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) Included: All full-time and regular part-time foremen, journeymen and apprentices Excluded: All other employees including estimators, supervisors, shop person, office managers, secretaries, contractor/president, confidential employees and guards and/or watch persons, as defined in the Act. 6a. Number of Employees in Unit: Present Approximately 34 Proposed (By UC/AC) 6b. Is this petition supported by 30% or more of the employees in the unit? [x] Yes [] No *Not applicable in RM, UC, and AC

7a. [x] Request for recognition as Bargaining Representative was made on (Date) by the filing of this petition and Employer declined recognition on or about (Date) (If no reply received, so state). 7b. [] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state.) None Affiliation Address Tel. No. Date of Recognition or Certification Cell No. Fax No. e-Mail

9. Expiration Date of Current Contract. If any (Month, Day, Year) 10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes No X 11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name) Since (Month, Day, Year), a labor organization, of (Insert Address)

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11 c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name Address Tel. No. Fax No. Cell No. e-Mail

13. Full name of party filing petition (if labor organization, give full name, including local name and number) International Union of Painters and Allied Trade, Painters Union Local 1791

14a. Address (street and number, city, state, and ZIP code) 2240 Young Street Honolulu, Hawaii 96826 14b. Tel. No. EXT (808)-941-0991 14c. Fax No. (808) 955-8091 14d. Cell No. 14e. e-Mail

14. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization) International Union of Painters and Allied Trades

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief. Name (Print) Rebecca L. Covert Signature Title (if any) Attorney Address (street and number, city, state, and ZIP code) 345 Queen Street, Room 506 Honolulu, Hawaii 96813 Tel. No. (808) 526-3003 Fax No. (808) 531-9894 Cell No. e-Mail

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

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT 'G'

BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA

EKO PAINTING, INC.

Employer,

and

INTERNATIONAL UNION OF
PAINTERS AND ALLIED TRADE,
PAINTERS UNION 1791,

Petitioner.

Case No. 20-RC-082348

CERTIFICATE OF SERVICE.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document will be duly served upon the parties identified below by email and by deposit in the U.S. mail at the indicated address on the July 13, 2012.

HERBERT TAKAHASHI, ESQ.
345 Queen Street, Rm. 506
Honolulu, Hawaii 96813

Attorney for Union

DATED: Honolulu, Hawaii, July 13, 2012.



CID H. INOUYE
KRISTI L. ARAKAKI
Attorneys for Employer
EKO PAINTING, INC.