



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 2
26 Federal Plaza – Room 3614
New York, New York 10278-0104

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August 1, 2012

By Electronic Filing

Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th St., NW
Washington, DC 20570

Re: R&S Waste Services, LLC et al.
Case No. 02-CA-065928

Dear Mr. Heltzer:

Counsel for the Acting General Counsel (“General Counsel”) requests special leave to submit its attached Surreply and Motion to Strike Affidavit in response to the Reply to General Counsel’s Opposition to Motion to Dismiss Complaint filed by R&S Waste Services, LLC (“Respondent”) on July 31, 2012. *See D.L. Baker, Inc.*, 330 NLRB 521, 521 n.4 (2010) (surreply briefs are permitted when there are circumstances that warrant special leave from the Board’s normal procedures). General Counsel further requests that the Board expedite its ruling on Respondent’s Motion for Summary Judgment (“Motion”) in order to proceed with the August 14, 2012 hearing date on schedule.

In its Reply to the General Counsel’s Opposition to Motion to Dismiss Complaint (“Reply”) and attached affidavit by Joseph F. Spiezio III, Respondent brazenly attacks General Counsel, questions its conduct during the investigation, and attempts to dissuade General Counsel from pursuing this case by threatening to contact the Inspector General, “organizers,” the press, and “the oversight committee,” without any justification whatsoever. Respondent’s decision to make these frivolous attacks and threats instead of making any cognizable legal arguments or presenting any reasonable basis for its Motion for Summary Judgment, establishes that Respondent’s Motion should promptly be denied and gives rise to special circumstances under which General Counsel should be allowed to respond in the form of the attached Surreply.

Accordingly, General Counsel requests special leave to submit its brief Surreply in response to Respondent’s Reply.

Respectfully Submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Allen M. Rose
Colleen M. Fleming
Michael J. Bilik
Counsels for the Acting General Counsel
National Labor Relations Board – Region 2
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

R&S WASTE SERVICES, LLC
Respondent

and

ROGAN BROTHERS SANITATION, INC.
Respondent

Case No. 02-CA-065928
Case No. 02-CA-065930
Case No. 02-CA-066512
Case No. 02-CB-069408

and

**INTERNATIONAL UNION OF JOURNEYMEN AND
ALLIED TRADES, LOCAL 726**
Respondent

and

**LOCAL 813, INTERNATIONAL BROTHEROOD OF
TEAMSTERS**
Charging Party

Date of Electronic and Overnight Mailing: August 1, 2012

**AFFIDAVIT OF SERVICE OF: ACTING GENERAL COUNSEL'S SURREPLY TO
RESPONDENT'S REPLY TO OPPOSITION TO MOTION TO DISMISS COMPLAINT AND
MOTION TO STRIKE AFFIDAVIT**

I, the undersigned employee of the National Labor Relations Board, state under oath that, on the date indicated above, I served the above-entitled document(s) by electronic mail (email), as indicated below, upon the following persons, addressed to them at the following addresses:

By E-File

National Labor Relations Board
Office of the Executive Secretary
Attn: Lester A. Heltzer, Executive Secretary

By Electronic Mail

Michael J. Mauro, Esq.
Milman Labuda Law Group, PLLC
mike@mmmlaborlaw.com

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Gary Rothman, Esq.
Gary Rothman, Esq.
Law Offices of Richard M. Greenspan, P.C.
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By Overnight Mail

James Rogan, President
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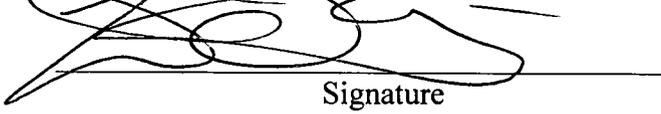
August 1, 2012

Date

Michael J. Bilik Field Attorney

Print Name

Title



Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**ROGAN BROTHERS SANITATION, INC.
RESPONDENT**

AND ITS ALTER EGO OR SUCCESSOR

**R&S WASTE SERVICES, LLC
RESPONDENT**

AND

Case No. 02-CA-065928

Case No. 02-CA-065930

Case No. 02-CA-066512

**INTERNATIONAL UNION OF JOURNEYMEN AND ALLIED TRADES, LOCAL 726
RESPONDENT**

Case No. 02-CB-069408

AND

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 813
CHARGING PARTY**

**ACTING GENERAL COUNSEL'S SURREPLY TO RESPONDENT'S REPLY TO
OPPOSITION TO MOTION TO DISMISS COMPLAINT AND MOTION TO STRIKE
AFFIDAVIT**

Counsel for the Acting General Counsel ("General Counsel") submits this Surreply and Motion to Strike Affidavit of Joseph F. Spiezio III in response to the Reply to General Counsel's Opposition to Motion to Dismiss Complaint ("Reply") filed by R&S Waste Services, LLC ("Respondent") on July 31, 2012.¹ Respondent's Motion to Dismiss Complaint ("Motion") and its Reply clearly demonstrate that every substantive allegation in the Complaint is in dispute. Instead of addressing the issues raised in the Complaint, Respondent hurls entirely unfounded

¹ General Counsel respectfully urges the Board to consider General Counsel's surreply based on the special circumstances raised in the cover letter attached to this Surreply. *See D.L. Baker, Inc.*, 330 NLRB 521, 521 n.4 (2010) (surreply briefs are permitted when there are circumstances that warrant special leave from the Board's normal procedures).

accusations and threats at General Counsel. These tactics are understandable because Respondent simply cannot demonstrate there is an absence of issues of material fact requiring a hearing – a reality of which Respondent is clearly aware. Rather, Respondent’s focus on the investigation and unfounded speculation concerning General Counsel’s motives and evidence suggest Respondent’s Motion and Reply are thinly veiled attempts to interpose delay and bully General Counsel into withdrawing the Complaint or at a minimum obtain discovery to which Respondent is not entitled. In order to mitigate the effects of Respondent’s abusive tactics, General Counsel respectfully urges the Board to deny Respondent’s Motion and do so in time to proceed on schedule with the August 14, 2012 hearing date.²

In its Reply, Respondent completely misrepresents General Counsel’s arguments and material facts, and in so doing completely mangles Board law and procedure. As noted in General Counsel’s Opposition to Motion to Dismiss Complaint (“Opposition”), Respondent did not cite any standard for granting its Motion, apart from a vague reference to unspecified “rules of civil procedure.” In its Reply, Respondent finally cites the seminal case on the standard which the Board applies in deciding summary judgment motions and motions to dismiss complaints. However, Respondent completely misstates the law. While Respondent contends that in *KIRO* the Board held that pleadings which raise a question of fact on their face are an insufficient basis for denying a motion to dismiss a complaint, Reply to Opp’n to Mot. for Summ. J. 2,³ in fact the Board held the opposite. See *KIRO, Inc.*, 311 NLRB 745, 746 (1993). As explained more fully in General Counsel’s Opposition, the Board has explicitly held that it will deny a motion for

² As noted in General Counsel’s Opposition at p. 6 n.5, Respondent’s request for an adjournment to an unspecified date in September was denied by the Associate Chief Administrative Law Judge on June 28, 2012. Instead, the Associate Chief Administrative Law Judge granted a briefer adjournment from July 30, 2012 to August 14, 2012. Allowing this baseless Motion to delay the trial past the August 14th date would provide Respondent with the lengthy adjournment it was denied through proper Board procedure.

³ General Counsel has taken the liberty of adding page numbers to Respondent’s Reply so that General Counsel can properly cite to the Reply. The Reply with page numbers is attached hereto as Exhibit A.

summary judgment or a motion to dismiss a complaint where the pleadings indicate there is a genuine issue of material fact. *See id.* The passage to which Respondent apparently refers is merely the Board's observation that in that particular case, neither the pleadings, nor arguments supporting the motion established a basis for dismissing the complaint. *See id.*

The Board has expressly rejected the proposition that General Counsel must provide a respondent with pretrial discovery in order to defeat a motion to dismiss a complaint. *See id.* at 746. Nor is there any basis for Respondent's insistence that General Counsel make an offer of proof or otherwise reveal the details of its case in order to withstand Respondent's Motion. General Counsel respectfully urges the Board to reject Respondent's demand for pre-trial discovery to which it is not entitled.

A central theme in Respondent's Motion, more fully developed in its Reply, is that General Counsel is engaged in a frivolous prosecution, and is motivated by malice against Respondent and favoritism toward Local 813, International Brotherhood of Teamsters (the "Union"). In support of this unfounded assertion, Respondent states that "General Counsel admits in its [O]pposition that it did not uncover any documentary evidence to support the allegations of the [C]omplaint." Reply to Opp'n to Mot. for Summ. J. at 2. Unsurprisingly, Respondent does not cite or quote from the passage in which General Counsel makes this startling admission because no such admission appears. In reality, General Counsel asserted, in accordance with Board procedure, it is declining to provide Respondent with pre-trial discovery and will reserve its evidence and arguments for the hearing, which is the proper venue under the Board's rules. Opp'n to Mot. for Summ. J. at 4.

Ultimately, Respondent's real objection is not with General Counsel's conduct, but with the Board's procedures and practices. Respondent argues:

“The procedural safeguards that provide the framework of fairness between litigants are absent at the NLRB. The absence of which forces Respondents to prove themselves innocent, rather than the NLRB prove them guilty. Nevertheless there is no shield for frivolous capricious matters to proceed to a hearing....”

Reply to Opp’n to Mot. for Summ. J. at 2. Thus, it appears Respondent’s true objection is not General Counsel’s supposed failure to comply with Board practice and procedures, but rather that General Counsel is fully complying with the Board’s practice and procedures, which Respondent considers to be unfair.

In Respondent’s mangled understanding of Board law and procedure, Respondent clearly believes that by simply submitting a self-serving affidavit that in effect denies allegations in the Complaint with its Motion and Reply, that it can remove an issue of material fact. Further, it appears, in Respondent’s view, the General Counsel is required to accept without question, affidavits provided by Respondent’s counsel as dispositive evidence. This view of Board practice is evident where Respondent in its Reply argues that because it submitted an affidavit from a current employee, the General Counsel is under an obligation to remove that employee’s name from the Complaint. Reply to Opp’n to Mot. for Summ. J. at 2-3. This affidavit submitted to the General Counsel for the first time as an attachment to the Motion to Dismiss, taken under circumstances about which General Counsel has no knowledge and which is filled with conclusory, nonprobative assertions, is obviously not a basis for withdrawing any allegation in the Complaint and certainly does not obviate any issue of fact. Reply to Opp’n to Mot. for Summ. J. at Exhibit R.

Respondent accuses General Counsel of ignoring a dismissal letter, issued about a year ago in Hankins Truck, 14-CA-030371, in which The Acting General Counsel dismissed a charge alleging alter-ego status on the basis that there was no centralized control of labor relations,

common ownership, or financial control. General Counsel is at a loss to understand how this random dismissal letter supports Respondent's Motion or Reply. In that case, General Counsel made an assessment of the facts and concluded the facts in that case did not support an alter-ego finding. In this case however, the General Counsel found the opposite, and General Counsel is asking the Board to permit the hearing to go forward to precisely decide this question of fact among several others.

Respondent's contention that any bargaining which may or may not have taken place between the Union and Rogan Brothers Sanitation, Inc. requires immediate dismissal of the Complaint is wholly without merit. Reply to Opp'n to Mot. for Summ. J. at 3. Whether Rogan Brothers Sanitation, Inc. and/or R&S Waste Services, LLC are meeting their collective bargaining obligations is precisely one of the questions of fact that requires a hearing. Respondent's nonprobative, nonspecific assertions about bargaining with the Union, not only fail to address most of the allegations in the Complaint, but fail to provide any probative basis for withdrawing any allegation.

Finally, Respondent attaches to its Reply an affidavit from Joseph F. Spiezio, III, the admitted managing member of R&S Waste Services, LLC. Reply to Opp'n to Mot. for Summ. J. at Exhibit A.⁴ The purpose of submitting Mr. Spiezio's litany of complaints and threats in the form of an affidavit is lost on General Counsel inasmuch as there is nothing probative in the document. His affidavit contains not one scintilla of evidence that obviates a reason to hold a hearing or otherwise supports Respondent's Motion or Reply. Mr. Spiezio boldly threatens the Region and the Board Agent who investigated the case with Rule 11 sanctions, an Inspector General investigation, unfavorable press coverage, and complaints to Congressional oversight committees, although the precise nature of the Agency's alleged wrongdoing is conspicuously

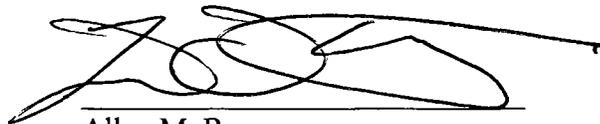
⁴ Spiezio's Affidavit provided by Respondent as part of its Reply, is attached hereto as Exhibit B.

absent. Although Mr. Spiezio is free to take his complaints to anyone who will hear them, this unsupported diatribe against the General Counsel and the National Labor Relations Board in general is in no way relevant to this litigation. Nor does this diatribe have any place as an attachment to Respondent's papers. Accordingly, General Counsel moves to strike Mr. Spiezio's affidavit.

For the reasons set forth above, General Counsel respectfully requests the Board deny Respondent's Motion to Dismiss Complaint in its entirety, strike the affidavit of Joseph F. Spiezio III attached to Respondent's Reply, and that an evidentiary hearing regarding all matters raised in the Complaint proceed as scheduled on August 14, 2012.

DATED at New York, New York this 1st day of August, 2012.

Respectfully submitted,



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Colleen M. Fleming
Michael J. Bilik
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colleen.fleming@nrb.gov
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A copy of the above Motion has been sent via electronic mail to the following:

Counsel for R&S Waste Services, LLC:

Michael J. Mauro, Esq.
Milman Labuda Law Group, PLLC
mike@mmmlaborlaw.com

Counsel for International Union of Journeymen and Allied Trades, Local 726:

Gary Rothman, Esq.
Law Offices of Richard M. Greenspan, P.C.
Gary.rmglaw@verizon.net

Counsel for Local 813, International Brotherhood of Teamsters:

Jane Lauer Barker, Esq.
Pitta & Giblin, LLP
jbarker@pittagiblin.com

A copy of the above Motion has been sent via overnight mail to the following:

James Rogan, President
Rogan Brothers Sanitation, Inc.
P.O. Box 1076
Yonkers, NY 10703-8070

EXHIBIT A

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 2**

-----X
**R &S Waste Services LLC
and**

Case No.: 2-CA-065928

**Local 813, International Brotherhood of
Teamsters,**

-----X

Respondent R & S Waste Services LLC (“R & S”) submits this reply in further support of its motion to dismiss the Complaint.

Counsel for the General Counsel has submitted an opposition that does not offer one shred of evidence to substantiate that a material fact is in dispute. Consequently, the motion must be granted.

It is simply astonishing that an executive branch agency would commit itself in writing that it is maintaining a purely frivolous prosecution. The Board must understand that when it proceeds on frivolous matters such as this it undermines its credibility. Even more disturbing is that the opposition makes clear that the actions of the Counsel for the General Counsel are designed to destroy a company that is creating jobs in an environment that desperately needs them. The president claims that his administration is helping business and growing the economy and therefore he should be re-elected. The Counsel for the General Counsel’s actions here contravenes the president’s claims. The employer’s owner is forced to now defend himself through judicial intervention and through regulatory oversight of the actions of Counsel for the General Counsel. (*See* attached at Exhibit A).

Since the Counsel for the General Counsel has failed to dispute one fact advanced in the motion and Charging Party did not bother to oppose the motion because it has no evidence, there is no point in wasting R & S’s time and the taxpayers’ time on this charade any longer. In any event, a few issues must be addressed.

First, the Counsel for the General Counsel contends that the instant motion is nullity under Board Law; it’s not. A motion to dismiss pre-hearing is a right of any respondent subjected to the persecution present here. *See Sodexo Am. LLC*, 2012 NLRB LEXIS 406 (N.L.R.B. July 3, 2012); *Local 307, Nat’l Postal Mail Handlers Union*, 2012 NLRB LEXIS 413 (N.L.R.B. July 9, 2012); *Kanawha Hospicecare, Inc.*, 2012 NLRB LEXIS 113 (N.L.R.B. Mar. 5, 2012).

The region’s reliance *Kiro, Inc.*, 311 N.L.R.B. 745 (N.L.R.B. 1993), is misplaced, in fact, it undermines the proposition the region advances. The region states it has no obligation to

challenge any of the facts presented by R & S because FRCP 56 is inapplicable. In *Kiro*, the General Counsel explained the basis for the genuine issue of fact. Here, the Counsel for the General Counsel merely points to the denials to allegations. The Board in *Kiro* said that was not sufficient. To wit, in *Kiro*, the Board stated that the supporting explanation of the denial was insufficient to warrant summary judgment. Here, Counsel for the General Counsel failed to even offer an argument to rebut R & S's contentions. In fact, Counsel for the General Counsel admits in its opposition that it did not uncover any documentary evidence to support the allegations of the complaint. The lack of evidence is further found in Counsel for General Counsel's trial subpoenas requesting the same documents it had access to during the investigation; there are no documents that will change the fact that there is no violation of the Act.

What is crystal clear from the opposition to the motion is that Counsel for the General Counsel can only rely upon the bare minimum of procedural gimmicks to avoid having to account for its lack of evidence. It is further clear that the region is trying to squeak to a trial in hopes of mustering a few kernels of evidence to run to court to get an injunction and try and resurrect an otherwise failed effort to shoehorn Local 813, IBT into a company contrary to the free choice of the employees; the kernels don't exist and the Board must not allow this travesty to continue any further. The Counsel for the General Counsel exalts form over substance; there is no justification for the government to engage in that kind of waste and abuse especially in this terrible economy.

Second, Counsel for the General Counsel is correct: litigation before the NLRB stands in sharp contrast to litigation in federal court. The procedural safeguards that provide the framework of fairness between litigants in federal court are absent at the NLRB. The absence of which forces respondents to prove themselves innocent rather than the NLRB prove them guilty. Nevertheless, there is no shield for frivolous capricious matters to proceed to a hearing; the motion must be granted.

Third, Counsel for the General Counsel claims issues of fact exist because R & S denied allegations of the complaint. This circuitous reasoning is risible if it were not dangerous. Counsel for the General Counsel argues that there are issues of fact that requires the issuance of Complaint because the respondent denied allegations of the Complaint in its answer to the Complaint. This is utter nonsense. Complaints are issued for a factfinder to determine issues of fact not to get the respondent to deny allegations of a ridiculously awfully plead complaint to create an issue of fact to create the need for a hearing. Yet, that is where R & S finds itself. This is also why Counsel for the General Counsel has not moved for injunctive relief in federal court after a nine month investigation: a federal judge would sanction the agency for deigning to request such relief in a purely frivolous complaint.

Fourth, Counsel for the General Counsel conveniently omits discussion of a critical fact that demonstrates the baseless claims against R & S. The Complaint specifically states that Wayne Revell was coerced and intimidated into resigning from Local 813, IBT as a condition for being hired at R & S and that he was also intimidated into signing an authorization card for Local 726. R & S submitted an affidavit from Revell stating that no such things every happened therefore there is no issue of fact requiring a hearing. Yet, Counsel for the General Counsel maintains that it happened and has not moved to amend the complaint to remove his name from

the pleading and carries on with the frivolous pleading. There is an utter disregard for the truth for which the Board should not tolerate.

Fifth, Counsel for the General Counsel ignores the Acting General Counsel's pronouncement in similar case: *Hankins Truck*, 14-CA-030371 (See attached at Exhibit B.) The Acting General Counsel refused to be accomplice to a union's effort to use the Board's process to steal a unit that it had no right to by agreeing with Region 14 in not issuing a complaint based upon an alleged alter ego status. The Acting General Counsel agreed with Region 14 that there was no centralized control of labor relations, no common ownership or financial control between the two entities. Consequently, refusal to issue the complaint was appropriate.

As set forth in detail with documentary evidence, there is no common control of labor relations, ownership or finances. There is no basis for the issuance of the Complaint in this matter, and, as in *Hankins Truck*, the Complaint should never been issued.

Sixth, Counsel for the General Counsel claims the lengthy investigation is due to "recalcitrance" of R & S. Nothing could be further from the truth. Attached hereto are emails between counsel for R & S and Region 2 demonstrating the diligence in which R & S has proceeded from the outset. (See Exhibit C.) Additionally, R & S repeatedly offered to produce witnesses to provide affidavits and also made available at its office voluminous documents for review; the region did not avail itself of the offers. Of course, consistent with how the region has conducted itself, it fails to notify the Board of that in its opposition to the motion. Also, the region again fails to explain why it disregarded its own rules in filing an untimely opposition to the petition to revoke.

The Counsel for the General Counsel's complaint about R & S filing a petition to revoke as evidence of alleged recalcitrance is misplaced. Most importantly, the Board's rules would not provide such a mechanism if it constituted "per se" recalcitrance. Additionally, as noted by the Board's decision of the petition to revoke, the Board struck down Region 2's effort to force R & S to produce the multitude of documents it had already produced. Again, the region failed to mention that salient fact; more evidence of the consistent disregard for due process and propriety.

As such, the region's claims of R & S's "recalcitrance" are spurious and deceitful. It's clear that the region has no regard for its own rules let alone the rights of R & S and that is why, as stated in the attached affidavit, R & S is forced to move in other forums to hold the responsible parties to account for the capricious and arbitrary actions it has been subjected to by the agency.

Seventh, Rogan Brothers Sanitation Inc. and Local 813 are scheduling bargaining sessions for a for a successor contract to the CBA that expired November 2011. (See attached letter at Exhibit D.) The fact that those two entities are bargaining discredits the Counsel for the General Counsel's claims that R & S is either the successor or alter ego of Rogan Brothers Sanitation, Inc. Region 2 has been aware of the bargaining as evidenced by the carbon copy of the letter to the Regional Director. This fact alone requires immediate dismissal of the Complaint.

In sum, Counsel for the General Counsel has not provided any evidence that any of its allegations of successorship/alter ego or unlawful assistance is credible. Conversely, R & S has come forward with irrefutable evidence that none of the required elements of those claims can be proven. A hearing in the matter would serve as a monumental waste of taxpayer money at the expense of harassing an employer providing jobs to union workers to help them put food on their plate and roofs over their families' head. Consequently, the Complaint is frivolous and must be dismissed immediately.

A final note on the trial date: R & S's owner is unavailable for the hearing on August 14, 2012 because he will be caring for his son who recently has had critical surgery. (*See* attached at Exhibit A.) R & S has requested an adjournment until September but that was denied by the chief administrative law judge. The Board is on notice that R & S has notified the Board and respective counsel that he is unable to proceed on August 14, 2012 and will not appear. There will be no prejudice for an adjournment because the instant motion must be granted.

Dated: July 31, 2012

MILMAN LABUDA LAW GROUP PLLC

By: /s/
Michael J. Mauro, Esq.

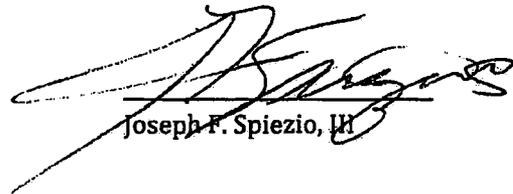
EXHIBIT B

STATE OF NEW YORK)
 ss:)
COUNTY OF WESTCHESTER)

Joseph F. Spiezio, III, being duly sworn deposes and states;

1. I am the Managing Member of R&S Waste Services, LLC, one of the respondents to a complaint issued by the NLRB ("R&S").
2. My request to my counsel for an adjournment is based upon family medical reasons.
3. My son was operated on and may need a second procedure next week.
4. I will not be available or commit to any dates till he goes back to school in September.
5. I will not be available on August 14, 2012.
6. This affidavit is based upon the denial of counsel's request for an adjournment of the hearing involving my company based upon my inability to be available.
7. There is no prejudice to any parties in adjourning the matter.
8. There was no basis for the denial by the NLRB or the charging party and it is clearly to harass the undersigned.
9. There is no emergency relief every requested nor could they file based upon the facts of this case and the failures of any evidence to support the NLRB theory of the case or they would have filed for a 10J injunction which we is the relief we pray for so that a Federal Judge can have control of this out of control matter.
10. The respondent's counsel filed a motion to dismiss and based upon the opposition it is even clearer that the case is frivolous and warrants dismissal so any adjournment does not prejudice the matter.
11. The unprecedented action of the NLRB Region 2 offices in the investigation of these charges is clearly selective and targeted and there is not one thing done that can support the theory proposed by charging party or NLRB.
12. It is outrageous how a Government Agency is controlled by the teamsters Union. The NLRB is truly an agency comprised of individuals with a set agenda to protect the Teamster Local 813 and in direct contravention of the law and a total disregard to my due process guaranteed under the constitution.
13. I will not be available or present to proceed and if the agency so chooses to present a case in my absence before an ALJ it is improper. It is a direct violation of my legal rights and a violation of the due process clause of the constitution.
14. The Motion to Dismiss filed by respondent will eliminate the entire controversy before the respective NLRB. It will eliminate further wasting valuable tax payer funds and the costs to respondent in defending these discriminatory and retaliatory charges filed.
15. The charges against R & S are nothing more than a fishing expedition to protect Teamster Local 813 and there is not one piece of evidence that could alter my opinion or the law of this case.

16. R&S should not be a named party and the NLRB knows that the charges are frivolous as evidenced by its complete inability to provide one shred of evidence challenging the facts R & S laid out in its motion to dismiss.
17. If the agency went into Federal Court there will be accountable for such reckless actions by the charging parties counsel and the NLRB. Many actions are governed by Rule 11 regarding sanctionable conduct.
18. I have prepared a letter to the Inspector General and request an investigation into Region 2 over this case and that of its Board Attorney Michael Bilik in the handling of matters in direct contravention of the rules of NLRB.
19. My attorneys filed a Motion to dismiss which is an absolute right when a party has to resolve a dispute such as this.
20. Upon completion of this affidavit, I will be meeting with organizers, the press and have already written to the oversight committee as well the Inspector General, the Senate and the Congress about the waste of taxpayer monies spent on attacks against American taxpaying citizens and my company.
21. I am not your typical "Sanitation" Company owner; I am a highly educated legitimate businessman who refuses to allow an agency that uses my hard earned dollars to seek frivolous relief.
22. Upon information and belief obtain by a worker, Board Agent Bilik and the President James Troy of the charging party have attempted to threaten and or coerce an employee with telephone communications.
23. I will be retaining additional counsel to represent me individually.
24. I respectfully request that this matter be dismissed or in the alternative an adjournment pending the decision of the motion to dismiss.



Joseph F. Spiezio, III

Sworn to before me this
31 Day of July, 2012



Notary Public

HOWARD KASSMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01KA6112367
Qualified in Suffolk County
My Commission Expires July 06, 2016