



**Moritt Hock
& Hamroff** LLP
ATTORNEYS AT LAW

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January 7, 2014

**VIA FEDERAL EXPRESS
VIA ELECTRONIC FILING**

National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001
Attn: Executive Secretary of the NLRB

**Re: Atlas Roll-Off Corp. / Employer and Local 175
United Plant & Production Workers IUJAT, Petitioner
NLRB Case No.: 29-RC-114120
MHH File No.: M-6591.005**

Dear Executive Secretary:

On **December 19, 2013**, our office filed documents with both the Washington, D.C. NLRB and Region 29 Brooklyn NLRB office.

Within the documents, we raised important issues on behalf of our firm's client, Atlas Roll-Off Corp. ("Atlas"), and requested a "**STAY**" of the January 8, 2014 Hearing before the NLRB Region 29.

I called on Christmas Eve and spoke with NLRB Washington counsel, Farah Qureshi, Esq. In early January, I also communicated with the NLRB Region 29 office as to whether the "**STAY**" would be granted.

As of this transmittal, I do not know if the "**STAY**" requested by Atlas has been granted.

On January 2, 2014, I received, via First Class Mail, a Supplemental Report dated December 30, 2013. Attached, marked as **Exhibit "10"** is a copy of the aforementioned NLRB Region 29 Supplemental Report dated December 30, 2013.

Due to a snow storm, our firm's Long Island office was closed on Friday, January 3, 2014.



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Accordingly, I could not write to you until today in that I was preparing for the Hearing currently scheduled to go forward on January 8, 2014 at 9:30 a.m.

With the foregoing as a background, we respectfully submit that the December 30, 2013 Supplemental Report supports Atlas' entitlement to a "STAY" of the January 8, 2014 Hearing.

We again assert that, in the best economic interests of the NLRB i.e., administrative/judicial economy and taxpayer dollars, the issuance of a "STAY" is warranted.

There is no prejudice in the issuance of a STAY.

The purpose of the Appeal process is negated and Atlas' rights in the Region 29 Report, moot/academic without a response from Washington.

I recognize with the recent Holiday(s) that the NLRB offices are very busy and that the Atlas case is one of many time-sensitive matters. However, given the Hearing is scheduled for tomorrow (January 8, 2014) at 9:30 a.m., I do not think it would be unreasonable to receive a telephone call from the NLRB as to whether Atlas' request for a STAY has been granted.

This communication supplements and, to the extent applicable, amends the filing submitted on behalf of Atlas on December 19, 2013.

In addition, this communication is being transmitted with a full reservation of all rights, defenses and subject to amendment.

Respectfully submitted,

Encl.

MORITT HOCK & HAMROFF LLP

By: _____


Gary Wirth, Esq.

cc: Via Facsimile: (718-330-7579) (w/attachment)
National Labor Relations Board
Attn: James G. Paulsen, Regional Director



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Via E-Mail: rachel.zweighaft@nlrb.gov (w/attachment)
National Labor Relations Board
Attn: Rachel Zweighaft, Esq.

Via E-Mail: nancy.reibstein@nlrb.gov (w/attachment)
National Labor Relations Board
Attn: Nancy K. Reibstein, Esq.

Via E-Mail: kate.anderson@nlrb.gov (w/attachment)
National Labor Relations Board
Attn: Kate Anderson, Investigator

Via E-Mail: farah.queshi@nlrb.gov (w/attachment)
National Labor Relations Board
Attn: Farah Qureshi, Esq.

Via E-Mail: tpatlasco@cs.com (w/attachment)
Atlas Roll-Off Corp.
Attn: Tom Polsinelli, Vice-President

Via E-Mail: chaikinlaw@aol.com w/attachment)
Chaikin & Chaikin,
Attn: Eric Chaikin, Esq.

Via E-Mail: rmaldonado@moritthock.com (w/attachment)
Moritt Hock & Hamroff LLP
Attn: Rosalyn Maldonado, Esq.

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ATLAS ROLL-OFF CORP.)	
)	
)	
and	Employer)
)	Case No. 29-RC-114120
)	
LOCAL 175, UNITED PLANT & PRODUCTION WORKERS, INTERNATIONAL UNION OF JOURNEYMEN AND ALLIED TRADES)	
)	
	Petitioner)

SUPPLEMENTAL REPORT ON OBJECTIONS

On December 13, 2013, the undersigned issued a Report on Challenges and Objections, and Notice of Hearing. In that Report, inter alia, the undersigned recommended overruling the Petitioner's third objection, which alleged that during the critical period, the Employer performed drug testing of certain employees and disparately applied the results of those drug tests, discharging certain employees who tested positive while allowing other employees who tested positive to remain employed, on the basis that a unfair labor practice charge had not been filed.

On December 23, 2013, in Case No. 29-CA-119669, the Petitioner filed an unfair labor practice charge which alleges, inter alia, that during the critical period prior to the election, the Employer engaged in drug testing of employees in a discriminatory manner in violation of Section 8(a)(1) and (3) of the Act. Because the filing of this new unfair labor practice charge affects the pending objections, I am issuing this Supplemental Report to address the issues raised by the charge.

Exhibit 10

In its unfair labor practice charge, the Petitioner specifically alleges that during the critical period, the Employer employed drug testing of employees and disparately applied the results of those drug tests, discharging Daniel Mazarina, who allegedly tested positive, while allowing other employees who tested positive to remain employed, and by allowing certain employees not to be tested, in violation of Section 8(a)(1) and (3) of the Act. Accordingly, I will now defer further consideration of this objection to the investigation of the unfair labor practice.

In addition, in its unfair labor practice charge, the Petitioner further alleges that during the critical period, the Employer, by Tom Polsinelli, threatened workers that he would never hire workers from a union hiring hall, and that although the Employer had the ability to get more work at Kennedy Airport, if the Union won the election, the Employer would go in a different direction. The Petitioner also alleges that the Employer introduced workers to a new trust plan where pre-tax money is set aside for workers' benefit.

In White Plains Lincoln Mercury, Inc., 288 NLRB 1133 (1988), the Board held that once an investigation of timely filed objections has begun, if "evidence is uncovered during the course of the investigation that warrants a finding of election interference – regardless of whether such misconduct was alleged in the objections – that evidence will support setting aside the election." White Plains Lincoln Mercury, Inc., 288 NLRB 1133, 1139 (1988); see also John W. Galbreath, d/b/a John W. Galbreath and Co., 288 NLRB 876 (1988) ("an election may be set aside on the basis of objectionable conduct discovered by the Regional Director in the course of his investigation of a party's timely filed election objections."). The Board has also held, though, that while a Regional Director may properly set aside an election based on unalleged misconduct discovered in the course of an investigation of timely filed objections, allowing a party to file subsequent objections once the time to file objections has expired would vitiate the requirement that parties file timely objections. See Burns International Security Services, Inc., 256 NLRB

959 (1981) (“Being inundated with successive sets of objections, the Regional Director, if he has to investigate each new allegation, could be prevented from or unduly delayed in concluding his investigation.”); see also Rhone-Poulenc, Inc., 271 NLRB 1008 (1984) (holding that the Board will consider evidence of “misconduct unrelated to . . . timely filed objections . . . only when the objecting party demonstrates by clear and convincing proof that the evidence is not only newly discovered but was previously unavailable.”). Indeed, in White Plains Lincoln Mercury, the Board recognized that a Regional Director may confine the investigation of timely filed objections “solely to those matters that are specifically set forth in the objections.” White Plains Lincoln Mercury, 288 NLRB at 1137.

The Petitioner’s charge in Case No. 29-CA-119669 was filed after the time to file objections has passed. The Petitioner’s allegations regarding Polsinelli’s alleged threats and the Employer’s alleged introduction of a new trust plan as objections to the election were not discovered in the course of the Region’s investigation of the Petitioner’s timely filed objections. Moreover, the Petitioner does not assert that this alleged conduct was newly discovered or previously unavailable. Accordingly, I will not consider the Petitioner’s allegations that Tom Polsinelli threatened workers that he would never hire workers from a union hiring hall, and that although the Employer had the ability to get more work at Kennedy Airport, if the Union won the election, the Employer would go in a different direction and that the Employer introduced workers to a new trust plan where pre-tax money is set aside for workers’ benefit as objectionable conduct.

The hearing currently scheduled for January 8, 2014 will proceed as set forth in my Report on Challenges and Objections and Notice of Hearing issued on December 13, 2013.

Right to File Exceptions

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8 as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

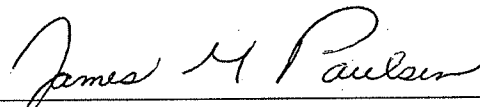
Procedures for Filing Exceptions

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on January 13, 2014, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board

may grant special permission for a longer period within which to file.¹ A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Brooklyn, New York, on this 30th day of December, 2013.



James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

¹ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK }
 } ss:
COUNTY OF NASSAU }

Maria Marchesi, being duly sworn, deposes and says:

That Deponent is not a party to this action, is over 18 years of age, and resides in Nassau County, New York.

That on the 7th day of January, 2014, Deponent served a true copy of a **Letter addressed to the National Labor Relations Board dated January 7, 2014, with attached Exhibit** upon:

Via Federal Express (w/encl.)
Via Electronic Filing (w/attachment)
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001
Attn: Executive Secretary of the NLRB

Via E-Mail: nancy.reibstein@nlrb.gov
(w/attachment)
National Labor Relations Board
Attn: Nancy K. Reibstein, Esq.

Via Facsimile: (718-330-7579) (w/attachment)
National Labor Relations Board
Attn: James G. Paulsen, Regional Director

Via E-Mail: farah.queshi@nlrb.gov
(w/attachment)
National Labor Relations Board
Attn: Farah Qureshi, Esq.

Via E-Mail: rachel.zweighaft@nlrb.gov
(w/attachment)
National Labor Relations Board
Attn: Rachel Zweighaft, Esq.


Via E-Mail: tpatlasco@cs.com (w/attachment)
Atlas Roll-Off Corp.
Attn: Tom Polsinelli, Vice-President

Via E-Mail: kate.anderson@nlrb.gov
(w/attachment)
National Labor Relations Board
Attn: Kate Anderson, Investigator

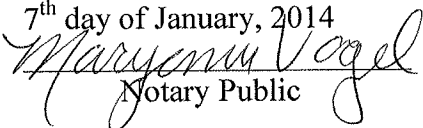
Via E-Mail: chaikinlaw@aol.com
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Chaikin & Chaikin,
Attn: Eric Chaikin, Esq.

Via E-Mail: rmaldonado@moritthock.com
(w/attachment)
Moritt Hock & Hamroff LLP
Attn: Rosalyn Maldonado, Esq.

by transmitting the papers by electronic means to the Facsimile and Email addresses listed above, which addresses were designated by the recipients for such purpose. I received confirmations indicating that the transmission(s) were received; and by depositing a true copy thereof, enclosed in a wrapper addressed as shown above, into the custody of Federal Express for overnight delivery, prior to the latest time designated by that service for overnight delivery.



Maria Marchesi

Sworn to before me this
7th day of January, 2014

Notary Public
522877v1

MARYANNE VOGEL
Notary Public, State of New York
No. 30-4828271
Qualified in Nassau County
Commission Expires August 31, 2017