| | 1 2 3 | ATKINSON, ANDELSON, LOYA, RUUD & R A Professional Corporation Thomas A. Lenz, State Bar No. 152624 Kristen N. Silverman, State Bar No. 279842 | OMO | |
|--------------------------|-------------|--|--|--|
| | 4 | Cerritos, California 90703 | | |
| | 5 | Facsimile: (562) 653-3333 | | |
| | 6 | Attorneys for Employer Road Works, Inc. | | |
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| 1 | 8 | UNITED STATES OF AMERICA | | |
| | 9 | BEFORE THE NATIONAL LABOR RELATIONS BOARD | | |
| | 10 | | | |
| | 11 | ROAD WORKS, INC., | CASE NO. 21-RC-21306 | |
| 3333 | 12 | Employer, | EVCEDEVONG TO HE ADING | |
| | 13 | and | OFFICER'S REPORT AND | |
| FACSIMILE: (562) 653-333 | 14 | SOUTHERN CALIFORNIA DISTRICT | RECOMMENDATIONS [Board Rules & Regulations Section | |
| BCE: (56 | 15 | COUNCIL OF LABORERS AND ITS AFFILIATED LOCAL LABORERS | 102.69] | |
| FACSIN | 16 | INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1184, | | |
| | 17 | Petitioner. | | |
| | 18 | | | |
| | 19 | TO EXECUTIVE SECRETARY: | | |
| | 20 | Employer, Road Works, Inc. excepts to the Hearing Officer's Report ("Report") and | | |
| | 21 | Recommendations in the above-captioned matter dated December 16, 2011 as follows: | | |
| | 22 | 1. The Report erroneously determines that Daniel Blocker voluntarily quit his | | |
| | 23 | employment and, therefore, lost eligibility to vote, despite evidence of Daniel | | |
| | 24 | Blocker's ongoing employment relationship and reasonable expectation of future | | |
| | 25 | work. (Report pp. 6-10). | | |
| | 26 | 2. The Hearing Officer erred by s | stating that Daniel Blocker did not satisfy the | |
| | 27 | Daniel/Steiny voting eligibility | formula for the construction industry, when | |
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continued employment and expectation of future work were established and,

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| KW E. SUITE 20703 (714) 8 3333 | 13 |
| IRT DRIVI | 14 |
| ATTORNEYS AT LAW 12800 CENTES COURT DINCE, SUITE 300 CERRITGE, CALIFORNIA 90703 HONE: (562) 853-3200 • (714) 826-5. FACSIMILE: (562) 653-3333 | 15 |
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| ATTORNEYS AT LAW 1 2800 CENTER COURT DINK, SUITE 300 CERRITOS, CALPORNA 90703 TELEPHONE: (562) 953-3200 • (714) 826-5480 FACSIMILE: (562) 653-3333 | 17 |
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accordingly, days worked for an employee on payroll as of the voter eligibility cutoff date are irrelevant to a finding of voter eligibility. (Report pp. 6-10)

- 3. The Hearing Officer rulings on Daniel Blocker's eligibility and refusal to open Mike Wessel's eligible vote erroneously disenfranchise both voters and affect the election result in which there is a 6-4 tally with 2 determinative challenged ballots. (Report p. 25)
- 4. The Hearing Officer properly rejected Petitioner-Union efforts at hearing to change grounds for challenge to Mike Wessel (Report p. 24, footnote 6) but erred in failing to do the same when the Petitioner-Union changed its grounds for challenge at hearing with determinative challenged voter Daniel Blocker (Report pp. 6-10).
- The Hearing Officer erred by stating no reasoning for failure and refusal to discuss evidence and basis for findings on Daniel Blocker in the Report. (Report pp. 6-10).

Respectfully submitted.

DATED: December 29, 2011

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By:

Thomas A. Lenz

Attorneys for Employer Road Works, Inc.

PROOF OF SERVICE

(Code Civ. Proc. § 1013a(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 12800 Center Court Drive, Suite 300, Cerritos, CA 90703.

On **December 29, 2011**, I served the following document(s) described as * **EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATIONS** * on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

| NLRB Executive Secretary | E-filing | Via NLRB site |
|--|-------------------|--|
| Bruce Hill Acting Regional Director John Hatem, Hearing Officer NLRB Region 21 888 So. Figueroa Street, 9th Floor Los Angeles, CA 90017-5449 | Via mail/efiling | Tel: 213/894-5200 Fax: 213/894-2778 |
| CARLOS R. PEREZ, ESQ. Reich, Adell & Cvitan 3550 Wilshire Boulevard, Suite 2000 Los Angeles, California 90010 | Via Mail & e-mail | Tel: 213/386-3860 Fax: 714/834-0762 carlosp@rac-law.com Attorneys for Petitioner |
| Client | Via e-mail | |

- BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. The envelope(s) was deposited with the U.S. postal service that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY FAX: I sent such document by use of facsimile. Facsimile confirmation was received for recipients' facsimile number indicated above pursuant to California Rules of Court Rule 2008(e). The facsimile machine I used complied with California Rules of Court Rule 2003(3) and no error was reported by the machine.
- BY EMAIL: I sent such document by use of electronic mail to the above email address(es) on the date indicated above. (CCP § 1013(a)) Such document was scanned and emailed, without error, to such recipient whose e-address is indicated above pursuant to CCP § 1013(a); Service via § 102.114(i) of Board's Rules & Regs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 29, 2011, at Cerritos, California.

Janice Yasuda

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