

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

TREVCON CONSTRUCTION CO., INC.,)	
REICON GROUP LLC,)	
URBAN FOUNDATION/ENGINEERING LLC,)	
GENERAL CONTRACTORS ASSOCIATION)	
OF NEW YORK, INC.)	
)	
Employer,)	
)	
and)	
)	
DOCKBUILDERS LOCAL OF AMALGAMATED)	Cases 22-RC-70080
CARPENTERS AND JOINERS UNION)	29-RC-70402
)	29-RC-70380
)	
Petitioner)	
)	
and)	
)	
NEW YORK CITY DISTRICT COUNCIL)	
OF CARPENTERS)	
)	
Intervenor.)	
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**PETITIONER’S EXCEPTIONS TO HEARING OFFICER’S REPORT ON
OBJECTIONS TO ELECTION**

Petitioner Dockbuilders Local of Amalgamated Carpenters and Joiners Union (“Petitioner”) takes exception to the Hearing Officer’s Report on Objections to the Election for the following thirty-one (31) reasons:

1. Although the Hearing Officer purported to base his Report on credibility findings -- and, in particular, on his finding that only the testimony of Michael Bilello (“Bilello”), the District Council’s Executive Secretary-Treasurer (“EST”) was to be credited, and all

testimony inconsistent with Bilello's testimony (including testimony by other witnesses called by the District Council) was to be ignored -- the Hearing Officer committed legal error when he totally failed to take into account evidence as to which the testimony of both Amalgamated and District Council witnesses (including Bilello) were consistent; and, in doing so, he failed to consider critical facts.

2. Although the Hearing Officer purported to base his Report on the theory that the challenged conduct was simply permissible electioneering on the part of one union (the District Council) involved in a representational contest, the Hearing Officer totally failed to take into account facts supported by uncontradicted evidence -- including in particular Bilello's dual role as both the District Council's EST and Co-chair of the Board of Trustees of the District Council's benefit funds -- which transformed conduct which otherwise might have been "mere electioneering" into conduct that could be, and was, perceived as a threat to deprive workers of benefits if they selected Amalgamated as their bargaining representative: The Hearing Officer committed legal error when he concluded that Bilello's threats was insufficient to set aside to election.
3. Although the Hearing Officer enumerated the factors on which the Board has relied in determining whether to require a new election

in a representation contest, the Hearing Officer totally failed to apply those factors to the evidence presented at the Hearing, and never took into account the uncontradicted testimony of Amalgamated witnesses with respect to the dissemination and impact of Bilello's statements and conduct. For example, he failed to allow testimony on banked hours during the election for the proposition that they were eliminated for the purpose of convincing would be voters that Bilello in his dual role could deliver on his threat on taking action on the Welfare Plan prior to the election; and in doing so, he failed to consider critical facts and committed legal error.

4. Petitioner takes exception to the Hearing Officer's failure to credit Eric Gundersen's ("Gundersen") testimony that Bilello told attendees at a February 28, 2012 meeting about the potential transfer of pension funds to the Petitioner wherein Bilello told attendees that "over my dead body, I will never sign the check to give you any of your pension money if you go to Amalgamated." (Report at 4).
5. Petitioner takes exception to the Hearing Officer's failure to credit Gundersen's testimony regarding a January 2012 meeting wherein Bilello informed about 90 to 100 Dockbuilders in attendance that "if the dockbuilder left the pension fund, it would be in trouble...for the reasons stated he (Bilello) would not give us our

pension or welfare...that he (Bilello) would make sure that we didn't get out benefits." (Report at 5).

6. Petitioner takes exception to the Hearing Officer's failure to discredit Joseph Geiger testimony regarding Bilello's comments made at the January 24, 2012 membership meeting. (Report at 8).
7. Petitioner takes exception to the Hearing Officer's failure to credit Kalick's testimony that Bilello said he "...would not write a check to a non-traditional undocumented pension" as collaborative to the testimony of Amalgamated discredited witnesses. (Report at 8).
8. Petitioner takes exception to the Hearing Officer's failure to draw an adverse inference against the District Council for failing to call Lebo [who served as President of District Council during the campaign but was fired as President shortly thereafter] as a witness as to threats he made at a Hazmat class held on February 4, 2012 wherein Lebo informed the attendees that "[they're] going to lose [their] Benefit Plan if [they] choose to leave (the District Council)" and that "if [they] chose to go with Amalgamated [they] would lose all [their] health program completely." (Report at 6).
9. Petitioner takes exception to the Hearing Officer's finding that Petitioner failed to establish that Bilello was capable of carrying out his threats. (Report 6, 13).
10. Petitioner takes exception to the Hearing Officer's failure to give any weight to the testimony of Richard Ostrander that if the

member voted for Amalgamated “the minute the election was certified” they would lose their medical benefits and not be able to retire at 55 with their pension and he (Bilello) did not care what the law said, he was not going to sign the check and he would never sign the check. Ostrander also recalled Bilello at the same meeting advising the members in attendance that “the day that the election was certified, if Amalgamated won, our benefits would be terminated.” (Report at 6, including footnote 6, 13).

11. Petitioner takes exception to the Hearing Officer’s failure to credit Eugene Basile’s testimony regarding threats made by President Lebo during a February 4, 2012 Hazmat class. (Report at 5, 6 including footnote 6).
12. Petitioner takes exception to the Hearing Officer’s failure to credit James Wright’s testimony wherein Bilello is reported as telling attendees of a February 28, 2012 meeting that “it would be a cold day in hell” before he would sign the check over [transferring the pension money to the new union]” and that Bilello would drag it out in court so members would never be able to collect their pension. (Report at 5).
13. Petitioner takes exception to the Hearing Officer’s failure to credit the testimony of Eric Henderson who attended a February 28, 2012 meeting wherein Bilello spoke and told assembled members that if

Amalgamated won the election he would be signing the pension monies over his dead body. (Report at 6, including footnote 6).

14. Petitioner takes exception to the Hearing Officer's failure to credit Shawn Doyle's testimony that Bilello at a February 4, 2012 Hazmat class threatened that if Amalgamated won the election "you would lose your medical" and "you're not going to get your pension." (Report at 6).
15. Petitioner takes exception to the Hearing Officer's further failure to consider Doyle's testimony at a February 28, 2012 meeting wherein Bilello advised members that "you're never going to get your pension. We'll fight it out in court for yours. You'll have to take it from, you know, my dead body. You're going to lose your medical." (Report at 6, including footnote 6, 9).
16. Petitioner takes exception to the Hearing Officer's refusal to accept the fact that Amalgamated would have a pension plan to its members rather accepted the District Council's excuse for not transferring the pension money to a 401(k) or to a non-traditional pension. In fact, the Intervenor offered no proof or documentation at the hearing reflecting the allegations that Amalgamated was offering a 401(k). For some reason, the Hearing Officer refused to discredit the position taken by the District Council. (Report at 8, 9, 11 and 12).

17. Petitioner takes exception to the Hearing Officer's failure to discredit Bilello's testimony over his alleged belief that Amalgamated was not going to have a defined pension but rather have a 401(k), thus justifying why Bilello would not allow the pension monies to be transferred. (Report at 9, 11).
18. Petitioner takes exception to the Hearing Officer's finding that the Union [District Council] engaged in permissible give and take regarding the loss of benefits prior to the results of the election. (Report at 13).
19. Petitioner takes exception to the Hearing Officer's finding that Bilello failed to make a showing that his threats not to transfer pension funds was not objectionable. (Report at 14).
20. Petitioner takes exception to the Hearing Officer's finding that the Petitioner failed to establish that Bilello was capable of carrying out his threats. (Report at 13).
21. Petitioner takes exception to the Hearing Officer's failure to consider Intervenor's campaign literature as coercive, and therefore violative under the law (Report at 13), as well as the Hearing Officer's failure to take into consideration the Spivak Lipton Memo. (See Exhibit I-6).
22. Petitioner takes exception to the Hearing Officer's finding that the Hearing Officer discredited any testimony inconsistent with his finding. (Report at 13, footnote 6).

23. Petitioner takes exception to the Hearing Officer's finding that Objection 2 should be overruled. (Report at 13).
24. Petitioner takes exception to the Hearing Officer's finding that Objection 3 should be overruled. (Report at 14).
25. Petitioner takes exception to the Hearing Officer's finding that Lebo's remarks regarding the loss of health insurance benefits were not objectionable since there was no allegation that he threatened that benefits would be terminated prior to the results of the election being final. (Report at 13, footnote 7).
26. Petitioner takes exception to the Hearing Officer's failure to discredit Bilello's testimony that he did not threaten the discontinuance of health benefits before the election when in fact it was already done by Trustee Bilello with the elimination of "banked hours." (Report at p. 13).
27. Petitioner takes exception to the fact that the Hearing Officer denied Petitioner the right to cross-examine Bilello with respect to the elimination of banked hours for the purpose of showing that Bilello could carry through on his threats and in fact took action on the health benefits prior to the election adverse to the interest of the dockbuilders.
28. Petitioner takes exception that the Hearing Officer disregarded the fact that three (3) Fund's personnel, as well as the District Council's attorney (who does not serve as Fund's counsel) were

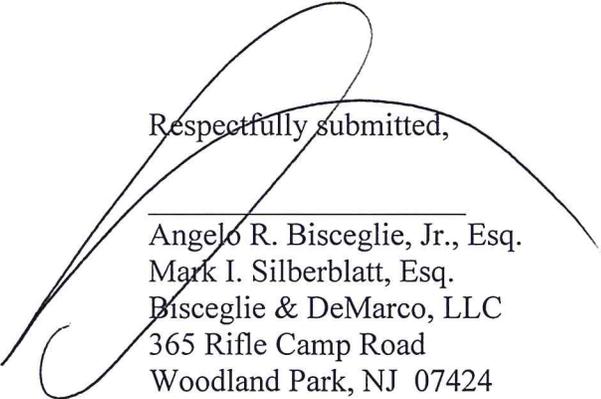
present during a February 28, 2012 union meeting wherein Bilello spoke and signaled to the attendees that he was speaking on behalf of and with the approval of the District Council Benefit Funds. (Report at 7, 8, 9, 13, 14).

29. Petitioner takes exception to the Hearing Officer's failure to recognize the severity of actions taken by Bilello/Lebo and the Spivak Lipton Memo and the likelihood of causing fear among employees in the bargaining unit. (Report at 12).
30. Petitioner takes exception to the failure of the Hearing Officer to recognize the wide dissemination of Bilello/Lebo threats shared among bargaining unit employees. (Report at 12).
31. Petitioner takes exception and strong umbrage to the Hearing Officer's self-serving proclamation in a footnote alleging "I have taken into consideration apparent interest of witnesses, corroboration or lack thereof, consistencies or inconsistencies...etc," when in fact the Hearing Officer failed to comply with such criteria, but rather used boilerplate, self-serving, conclusory language with respect to his alleged credibility findings. (Report at 3, footnote 3).

WHEREFORE, Petitioner respectfully requests the foregoing Exceptions to the Hearing Officer's Report and Recommendation on Objections to Conduct Affecting the Results of the Election be granted, the election be set aside, and a new election ordered.

Dated: December 17, 2012

Respectfully submitted,



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