

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

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In the Matter of:

SANITATION SALVAGE CORP.

Employer,

And

Case No. 02-RC-070804

LOCAL 108, WASTE MATERIAL RECYCLING  
INDUSTRIAL LABORERS

Petitioner

And

LOCAL 124, RECYCLING, AIRPORT, AND  
INDUSTRIAL SERVICE EMPLOYEES UNION

Intervener

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**EMPLOYER'S REPLY BRIEF IN FURTHER SUPPORT OF ITS EXCEPTIONS TO  
THE HEARING OFFICER'S REPORT ON OBJECTIONS**

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## **PRELIMINARY STATEMENT**

Sanitation Salvage Corp. ("Sanitation Salvage") respectfully submits this brief in further support of its exceptions to the Report on Objections (the "Report") and to briefly respond to certain arguments set forth by Petitioner Local 108, Waste Material Recycling Industrial Laborers (hereinafter "Local 108"). As set forth herein the Employer stands by the arguments set forth in its initial brief and does not believe that the majority of the arguments set forth in Local 108's opposition warrant further discussion. The Employer, however, is compelled to respond to Local 108's claim that conduct directed at two employees, in an election that was decided by a margin of twenty two votes, could have affected the outcome of this election.

## **ARGUMENT**

### **THE HEARING OFFICER ERRED IN CONCLUDING THAT ANY OF THE CONDUCT COMPLAINED OF HAD THE TENDENCY TO INTERFERE WITH THE EMPLOYEES FREEDOM OF CHOICE**

As set forth in detail in the Employer's initial brief even assuming any of the alleged objectionable conduct occurred, and to be clear the Employer disputes this, the Hearing Officer erred in concluding that the purported conduct had the tendency to interfere with the employees' freedom of choice. It is well settled that "[t]here is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (1991). It bears repeating that this was the second election conducted and that in both elections the overwhelming majority of employees voted to remain members of Local 124 and rejected Local 108's organizing efforts. Further it cannot be forgotten that the purported objectionable conduct was directed at merely two eligible voters and the margin of victory for Local 124 was twenty two votes.

In response Local 108 cites to a number of cases and purports to argue that even in landslide victories the conduct complained of here is enough to set aside an election. These

cases, however, are clearly distinguishable, both factually and for the legal propositions set forth therein. For example in *In Re Newburg Eggs, Inc.*, 357 NLRB No. 171 (Dec. 31, 2011) and *Truss-Span Co.*, 236 NLRB 50 (1978) the alleged statements were made at meetings or other venues with a large number of employees in attendance. Likewise in *Reliant Energy Aka Etiwanda LLC & Util. Workers of Am., Afl-Cio*, 357 NLRB No. 172 (Dec. 30, 2011), the alleged improper statements were distributed to all employees via e-mail. Additionally, in *Cambridge Tool & Mfg. Co.*, 316 NLRB 716 (1995) and *Interstate Truck Parts, Inc.*, 312 NLRB 661, 662 (1993) the conduct was directed at enough employees that could have changed the small margin of victory. Given that none of the cases cited involve objectionable conduct directed at two employees, with a large margin of victory, said cases are not supportive of Local 108's legal argument.

Perhaps recognizing that the majority of the cases it cited are not on point, Local 108 cited to a 1977 decision from the NLRB in *Super Thrift Markets, Inc.*, 233 NLRB 409 (1977) wherein the Board overturned an election with a large margin of victory and noted that "statements made during election campaigns can reasonably be expected to have been disseminated and discussed among employees." In doing so Local 108 ignores other recent precedent which teaches that "[t]he burden [to set aside an election] is even heavier where the vote margin is large." *The Permanente Med. Group, Inc.*, 358 NLRB 1, 4 (2012). Moreover the statement in *Super Thrift Markets, Inc.*, is nothing more than a presumption. Here the record is completely devoid of any evidence that Tarrell Sumlin and Hiram Arocho told any eligible votes of the alleged improper statements. Had they disseminated this information they clearly could have testified as such. Indeed, given that both of these employees were ardent supporters of Local 108 and actively involved in Local 108's organizing efforts, it defies logic to expect that

either of these individuals would have disseminated allegedly anti-Local 108 statements made by Messers. Lally and Mahr. In short the record is devoid of any evidence that the statements directed at **two** eligible voters “had a reasonable tendency to interfere with the employees’ freedom of choice in the election to such an extent that it materially affected the results.” *Jensen Enterprises, Inc. and Teamsters, Chauffeurs, Warehousemen and Helpers Local Union 631, et al.*, 290 NLRB 547 (1988).

### CONCLUSION

For the above-stated reasons, as well as those set forth in its initial brief, the Employer respectfully requests that its exceptions to the Hearing Officer’s Report be sustained and that the Board direct the Region to dismiss the objections filed by Local 108 in their entirety and further direct the Region to certify the results of the election conducted on August 16, 2012.

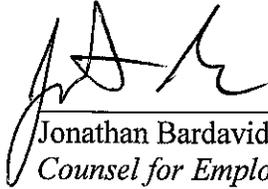
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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2013, I caused the foregoing EMPLOYER'S REPLY BRIEF IN FURTHER SUPPORT OF ITS EXCEPTIONS TO THE HEARING OFFICER'S REPORT ON OBJECTIONS to be served by electronic mail as follows:

Gregory B. Davis, Hearing Officer (Greg.Davis@nlrb.gov)  
Steven Kern, Counsel for Local 124 (skern@bislawfirm.com)  
Tamir Rosenblum, Counsel for Local 108 (trosenblum@masontenders.org)



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