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November 21, 2014

VIA NLRB E-FILING ONLY

Gary Shinnars, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Re: Employer's Reply to the Union's
Opposition to the Motion to Reopen the Record
Benjamin H. Realty and Local 55, Laborers
NLRB Docket #22-RC-087792

Dear Mr. Shinnars:

As your files should reflect, the undersigned represents Benjamin H. Realty as it concerns the above referenced matter. Please accept this correspondence as my client's Reply to the Union's Opposition to the pending Motion to Reopen this Record.

The Union relies on four (4) arguments that they believe require the pending Motion to be denied:

1. There are no extraordinary circumstances present;
2. Justo Perea has admitted a mistake;
3. The fact that the underlying Petition was filed by August 21, 2012; and
4. That the Employer has failed to should "immediate action."

I will address each of their arguments seriatim:

1. Extraordinary circumstances - I find it hard to believe that a State Court Complaint, being filed by the very individual who was the tie breaking vote in an election, where that person completely changes his position as to the date he ceased to become a supervisor, as being anything less than "extraordinary." To the contrary, this set of circumstances is "new," it is certainly "unique," and it is absolutely "extraordinary." While the fact that Mr. Perea was not the "Petitioner" is certainly accurate, as has been stated, his vote was the tie breaker in a highly disputed contest. There is no rule put forth by this Board, nor any case law, that requires an "extraordinary circumstance" to be emanating from the actions of the Petitioner. Indeed, the fact that this flip flop in testimony as to the date Perea lost his supervisory status is emanating from the tie breaking vote himself is what makes this situation so unique and extraordinary.

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The fact that a pleading filed with the Superior Court of New Jersey is stating something completely inapposite to the testimony of Mr. Perea that occurred in December of 2012, shows that there is an actual abuse of the testimony that was put forth in Region 22.

Therefore, the Employer has satisfied the requisite showing of there being extraordinary circumstances in this matter.

2. Justo Perea has supposedly admitted his mistake – counsel for the Union believes that the letter written by Pastor Perea’s attorney, George R. Szymanski, Esq., on October 23, 2014, admitting his “simple mistake,” somehow emilorates the perjured testimony of Mr. Perea. This is supposedly because Mr. Perea and Mr. Szymanski did not know of this mistake in dates in advance of the drafting of the Complaint.

Attached hereto as Exhibit “1” is correspondence that was forwarded by the undersigned directly to Mr. Szymanski via facsimile on December 12, 2013, almost seven (7) months prior to his filing of the State Court Complaint, and over nine (9) months prior to the service of same which forms the basis of the Employer’s Motion. As this Board will note, on December 12, 2013, I directly brought to the attention of Mr. Szymanski that the dates as being related to him by Mr. Perea were in error and not accurate. Both Mr. Szymanski and Mr. Perea ignored my alert, and proceeded nonetheless with the filing of the instant Complaint in the Superior Court of New Jersey. Thus, it is disingenuous for Mr. Szymanski to claim that it was a “simple mistake,” as both he and Mr. Perea were put on notice at a minimum of six (6) months before the filing of their Complaint that their facts were in error. The fact that Mr. Perea and Mr. Szymanski proceeded with this law suit is indicative of the fact that they both knew at the time of filing that the new date of Mr. Perea’s demotion was subsequent to the election in this matter. Mr. Szymanski and Mr. Perea can hardly feign surprise at the position of my client, as they both had prior knowledge by my having pointed it out to them of their inaccurate dates.

Therefore, the fact that they proceeded to litigation with this knowledge of Perea being a supervisor on the day of the election is what makes the pending Motion to Reopen all the more “extraordinary.”

3. Two year old case – it cannot be disputed that the Petition in this matter was filed on August 21, 2012. However, there have been no allegations whatsoever of any abuse of process by my client. In fact, the Employer has availed itself of all lawful Exceptions/Requests for Review that are granted to it under the Board’s process. This Board cannot use as a reason for denying the pending good faith Motion the fact that the Employer availed itself of its rights that the National Labor Relations Act has granted to it. This is especially true when the very issue that my client seeks review of in this Motion may have been the subject of perjured testimony. Additionally, the fact that the case of Noel Canning was decided in the interim, thereby further extending any time lag in question, can also not be held against my client. Indeed, to do so, is to deny my client Due Process in the pending Motion by holding against them the rights that they lawfully pursued in the handling of this matter.

Therefore, again, counsel for the Union has raised an argument that is simply irrelevant and unjustified on its face.

4. The purported lack of “immediate action” – here is where the misrepresentations of counsel for the Union are the most egregious. Counsel for the Union would have this Board believe that there was an intentional three and a half month delay in filing the instant Motion. But

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as this Board should be mindful of, there is an enormous distinction between the filing of a Complaint, and its service upon a party. While the Complaint may have been filed in June, it was not served until September, 2014. As such, there was no three and a half month long delay in filing the instant Motion. Rather, there was, at most, a three to four week lag time (with, ironically enough, the Labor Day Holiday occurring in this time period). Additionally, this Board should be mindful of the fact that, unlike the Federal system, New Jersey has no computer database to log into or to provide prompts upon the filing of a Complaint. Whereas the Federal Court system has PACER, and New York has a similar computer base filing system that is tracked by Bloomberg, New Jersey has no such service. Thus, there is no way for my client to have known that a case was filed in June of 2014 until it is actually delivered by service of process to them. As stated in the Motion, this occurred sometime in the first week of September, 2014. In addition to the Labor Day Holiday (for which I was away), the Jewish Holidays were being observed on the night of September 24th and all day on the 25th and 26th. The time in reviewing the prior testimony, drafting, and filing a Motion that meets the standards and requirements of this Board, the totality of which equaled no more than three to four weeks, can hardly be seen as anything less than satisfying the "immediate action" requisite of the Board's regulations.

Finally, counsel for the Union asks "why not provide proof of the date of service?". That is because there is no "receipt" that is provided with a Complaint that is served upon a Defendant. Rather, that receipt is returned to the serving party. Be that as it may, attached hereto as Exhibit "2" is the Affidavit of Benjamin Herbst, the principal of Benjamin H. Realty, which affirms the foregoing. It is respectfully submitted that the three to four week time frame to file the instant Motion satisfies this pleading requirement.

Conclusion – based upon the above, and most importantly, the correspondence that was sent to George Szymanski almost seven (7) months prior to his filing the instant Complaint, it is the Union that cannot dispute that there are "extraordinary circumstances" that require that this matter either be reopened, or for the supervisory status of Mr. Perea to be re-examined, or a new election to be held, and/or a ruling that the ballot of Mr. Perea should not be counted. The fact that this was "previously litigated" is of no moment if Mr. Perea did not provide truthful testimony, as is now apparent from the instant filing in the Superior Court of New Jersey. Therefore, it is respectfully requested that the Employer's Motion be considered, and that the relief set forth in said Motion be granted.

Very truly yours,

HOROWITZ LAW GROUP, LLC



Steven B. Horowitz, Esq.
shorowitz@horowitzlawgroup.com

SBH:pls

Enclosures

- c: Curtiss T. Jameson, Esq. (via facsimile only, w/enclosure)
George R. Szymanski, Esq. (via facsimile only, w/enclosure)
Benjamin H. Realty (via email only, w/enclosure)
David Leach, Regional Director (via facsimile only, w/enclosure)

EXHIBIT 1



HOROWITZ
LAW GROUP, LLC

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December 12, 2013

VIA FACSIMILE & REGULAR MAIL

George R. Szymanski, Esq.
Law Offices of George R. Szymanski
1370 Chews Landing Rd.
Laurel Springs, New Jersey 08021

Re: Justo Pastor Perea and Benjamin H. Realty

Dear Mr. Szymanski:

This correspondence will confirm our conversation of Wednesday, December 11, 2013, as it relates to your Demand Letter to Benjamin H. Realty on behalf of Justo Pastor Perea. Please forward all future communications directly to my attention as it concerns this matter.

In accordance with that conversation, I indicated to you that there has been substantial testimony by Mr. Perea as it relates to his alleged "demotion" at the National Labor Relations Board, Region 22, relative to this issue in case number 22-RC-087792. Moreover, charges were filed by the Union in that case relative to the alleged demotion and reduction in pay by Mr. Perea, which were all administratively dismissed. Therefore, my client's deny that there has been any discrimination against Mr. Perea due to his disability, age, and/or ethnicity.

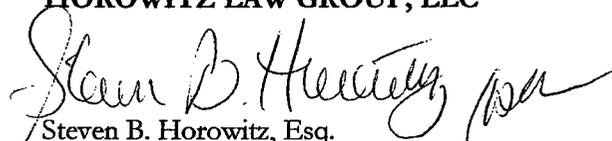
Having so stated, my client would be willing to discuss with you a resolution which would include Mr. Perea resigning his position with Benjamin H. Realty, and vacating his apartment. Should we be able to agree on an amount (which we would be willing to classify as "liquidated damages" for which Mr. Perea would receive a Form 1099 at the end of the year), we would further require that Mr. Perea execute a release of all claims of any nature whatsoever, including claims related to the Equal Employment Opportunity Laws as well as the National Labor Relations Act, among others.

However, I want to be clear that if we are not able to obtain a meeting of the minds on this matter, it is my client's intention to contest each and every claim of discrimination that you may raise, and will rely on the extensive evidence in this regard that has already been established at the National Labor Relations Board.

Thank you for consideration of this matter. Should you wish to tender any form of offer in this regard, please feel free to contact me with same at your convenience.

Very truly yours,

HOROWITZ LAW GROUP, LLC


Steven B. Horowitz, Esq.
shorowitz@horowitzlawgroup.com

SBH:pls

c: Benjamin H. Realty (via e-mail only)



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FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
George R. Szymanski, Esq.	Steven B. Horowitz, Esq.
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Law Offices of George R. Szymanski	12/12/2013
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-RAVIN GREENBERG PC -

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EXHIBIT 2

AFFIDAVIT

COMES NOW, Benjamin Herbst, and hereby affirms as follows:

1. I am the President of Benjamin H. Realty, and make this Affidavit in support of the Employer's Reply to the Union's Opposition to the Motion to Reopen the Record.
2. During the first week of September, I personally received for the first time a copy of the Complaint filed by Mr. Perea in the Superior Court of New Jersey, Essex County, which directly contradicts his testimony as stated in case number 22-RC-087792.
3. I thereafter forwarded this Complaint to my attention that same day

Dated: November 20, 2014

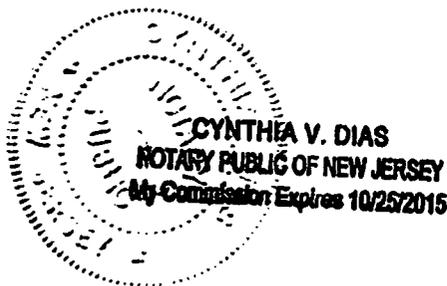


Benjamin Herbst

Sworn to by and before me this
21st day of November, 2014.

Cynthia V. Dias

Notary Public



MEMORANDUM

TO: THE PRESIDENT

FROM: [Illegible]

SUBJECT: [Illegible]

[Illegible]

[Illegible]

[Illegible]

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