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March 24, 2015

VIA E-FILE ONLY

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

Re: Benjamin H. Realty Corporation and
Residential Construction and General
Service Workers, Laborers Local 55
Case 22-RC-087792

Dear Mr. Shiners:

Please accept this letter in lieu of a more formal reply to the Region's Opposition to the Employer's Motion to Reopen the Record and its Motion for Reconsideration of Case No. 22-RC-087792.

- 1. THE REGION'S OPPOSITION PAPERS WERE FILED OUTSIDE OF THE TIME PERIOD ESTABLISHED IN THE NOTICE TO SHOW CAUSE, AND SHOULD BE REJECTED AS UNTIMELY.**

On November 3, 2014, the Office of the Executive Secretary, under direction of the Board, issued a Notice to Show Cause which stated as follows:

"NOTICE IS GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C., on or before November 17, 2014 (with Affidavit of Service on the parties to this proceeding), why the Employer's motion should not be granted. Any briefs or statements in support of the motion shall be filed on the same date" (emphasis added).

The Region filed the instant Opposition not one day, two days or even three days past this deadline, but over five (5) months late. For this reason alone, the Region's Opposition should be rejected in its entirety as untimely.

It should be noted that this is not the first time the Region has acted in a cavalier manner with regards to the dates and deadlines as established by the Board. In the November 13, 2014 Decision, Certification of Representative, and Notice to Show Cause, the Decision clearly states that the General Counsel was granted leave to Amend the Complaint on or before November 24, 2014. Not only did the Region fail to make any inquiry of the Employer per the Board's instructions, it

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also failed to file a Motion to Amend the Complaint on or before that November 17th date. Indeed, it was not until February 6, 2015 that the Region sought to amend the Complaint. This intentional flaunting of the Decisions and the Rules and Regulations of the NLRB has been a consistent theme in this case, not only as it pertains to the filing of the appropriate pleadings, but also as it relates to the merits of this case.

Therefore, based on these procedural guidelines alone, the Region's Opposition to the Employer's Motion should be stricken and no weight applied to the arguments as contained therein.

2. ASSUMING THIS BOARD ALLOWS GENERAL COUNSEL'S OPPOSITION, THE ARGUMENTS AS CONTAINED THEREIN SHOULD NOT BE CREDITED.

In the Opposition to the Employer's Motion to Reopen, Counsel for General Counsel maintains, in essence, two arguments (as quoted directly from the Opposition):

1. "Thus, the Employer's argument fails because it requires one to speculate that as Perea is *alleged* to have been a property manager commencing in 2001 and he is *alleged again* to have been demoted to the position of superintendent in 2013 ..., that he must have been the property manager during the November 12th election *and* that he must have continued to exercise at least one of the supervisory indicia he earlier possessed as property manager through the date of the election;" and
2. "Even *assuming arguendo* that Perea continued to hold the title of "property manager" during the election, merely holding a title is insufficient under Board law to establish that an individual is a statutory supervisor" (see Page 4, first and second paragraphs on said pages).

What Counsel for General Counsel either has forgotten, or intentionally ignored, is the fact that counsel for the Petitioner, Ray Heineman, as well as Mr. Perea himself, acknowledged that Pastor Perea was a supervisor in 2012. See Employer's Motion to Reopen, referencing transcript pages 17 and 18. Therefore, there is no "allegation" of being a Section 2(11) supervisor. Nor is there an "assumption" in this regard. Rather, there was an admission by the attorney for the Union in the hearing, and by Perea himself, as to his supervisory status. When coupled with the fact that in Pastor Perea's own civil litigation case he admitted that he was not demoted until January of 2013 (subsequent to the Election), there can be no conclusion other than the fact that Mr. Perea was a supervisor during the time of the Election.

It is bewildering how the Region, counsel for the Petitioner, and Pastor Perea's own civil litigation attorney are ignoring this blatant omission as to his supervisory status, and the inconsistency raised by his subsequent lawsuit.

The Deputy Regional Attorney for Region 22 concludes that the Employer "... has failed to present any new evidence ..." to support this motion. Again, it is bewildering how this Region and

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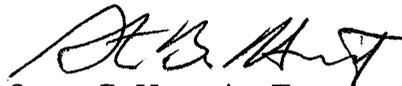
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this Board is going out of its way to ignore a Complaint filed in Superior Court of New Jersey that completely contradicts the testimony supplied at this Region by Mr. Perea. It is specifically for this reason that the Employee's Motion should be reviewed, that the Board's prior Decisions concerning this issue be reversed and/or that a new hearing be scheduled to investigate the inconsistencies as it relates to Mr. Perea's supervisory status at the time of the Election.

Thank you for your attention to this matter.

Very truly yours,

HOROWITZ LAW GROUP, LLC



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