



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 22

20 Washington Place - 5th Floor

Newark, NJ 07102-3110

March 24, 2016

National Labor Relations Board
Office of the Executive Secretary
Attn: Gary Shinnars
1015 Half Street SE
Washington, DC 20570

Re: Local 560, IBT (County Concrete)
Cases 22-CC-083895
22-CE-084893

Dear Mr. Shinnars:

As you know, it has been brought to the undersigned's attention that during the above-referenced litigation, Counsel for the General Counsel has submitted to the Board two different versions of the informal settlement agreement approved by Regional Director J. Michael Lightner on August 1, 2012, which is the subject of Counsel for the General Counsel's pending Motion for Default Judgment. Please accept this letter clarifying the inadvertent, yet understandable, confusion.

On July 17 and 19, 2012, the Charged and Charging Parties each executed an informal settlement agreement intended to resolve the above-referenced unfair labor practice charges. On August 1, 2012, the Regional Director for Region 22 approved this bilateral, informal settlement. The copies signed by each of the parties was attached as Exhibit C to the undersigned's September 28, 2015 Motion for Default Judgment.

Shortly after this settlement agreement was executed, a conformed copy of the settlement agreement was prepared. This conformed copy mistakenly contained an earlier version of the 2-page rider appended to the settlement agreement. Paragraphs 6 and 10 are noticeably different in the two versions of the rider. This earlier version of the rider may have mistakenly been sent out to the parties in the Region's opening compliance letter. Additionally, the undersigned mistakenly attached this earlier draft of the rider as Exhibit A to my May 29, 2013 Memorandum of Law in Support of the Acting General Counsel's Motion for Summary Default Judgment and for the Issuance of a Board Decision and Order (Also General Counsel Exhibit 3 in the record before ALJ Arthur Amchan).

Please disregard the earlier draft version of the settlement agreement rider attached to the May 29, 2013 Memorandum of Law (attached to this letter as Exhibit A) and

instead substitute the settlement agreement rider supplied in the September 28, 2015 Motion for Default Judgment (attached to this letter as Exhibit B). It is abundantly clear on the face of that document that Respondent counsel initialed each page of the settlement agreement and rider on July 17, 2012, the same date that he signed the settlement agreement on behalf of his client. Therefore, this is the only version of the settlement agreement that the parties have relied on throughout this proceeding and the one in which we assert Respondent has defaulted on its terms.

I apologize for the confusion caused by the Region's inadvertent mistake.

Thank you for your courtesy and attention to this matter.

Respectfully submitted,



Michael Silverstein, Esq.
National Labor Relations Board
Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102
(973) 645-3077

Attachments

CERTIFICATION OF SERVICE

This is to certify that the Counsel for the General Counsel's Letter has been served on this date as follows:

By Electronic Filing:

National Labor Relations Board
Office of the Executive Secretary
Attn: Gary Shinnars
1015 Half Street, SE
Washington, D.C. 20570-0001

By Electronic Mail:

Brian Shire, Esq.
Susanin Widman & Brennan, PC
1285 Drummers Lane, Suite 202
Wayne, Pennsylvania 19087
bshire@swbcounsellors.com

By Electronic Mail:

Paul Montalbano, Esq.
Cohen, Leder, Montalbano & Grossman
1700 Galloping Hill Road
Kenilworth, New Jersey 07033
montalbanoemail@yahoo.com

Dated at Newark, New Jersey this 24th day of March 2016



Michael Silverstein
Counsel for the General Counsel
National Labor Relations Board
Region 22
20 Washington Place; 5th Floor
Newark, NJ 07102-3100
(973) 645-3077

Yes _____
 Initials

No _____
 Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Rider to the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. Such order shall be recognized as equivalent to a plea of *nolo contendere* and shall not negate the terms of the Non-Admissions provision. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order *ex parte*, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party LOCAL 560, I.B.T.		Charging Party COUNTY CONCRETE CORPORATION	
By: Name and Title	Date	By: Name and Title	Date
/s/ Paul Montalbano	7/17/12	/s/ John C. Crimi	7/19/12
Attorney		John C. Crimi	
Recommended By:	Date	Approved By:	Date
/s/ Nancy Slahetka	7/23/12	/s/ J. Michael Lightner	8/1/12
Nancy Slahetka, Board Agent		Regional Director, Region 22	

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT enter into, maintain, enforce, or give effect to Article 3, Section 2A, paragraph 2 of the Project Labor Agreement between Phelps Construction Group LLC and the Essex County Building and Construction Trades Council, or any similar contract provision with any other employer, whereby such employer agrees to cease or refrain from doing business with County Concrete Corp. or any other person within the meaning of Section 8(e) of the Act.

WE WILL NOT threaten, restrain, or coerce Phelps Construction Group LLC or any other person in order to force Phelps Construction Group LLC to enter into an agreement that is prohibited by Section 8(e) of the Act.

WE WILL NOT threaten, restrain, or coerce Phelps Construction Group LLC or any other person in order to force Phelps Construction Group LLC to stop doing business with County Concrete Corp. or other persons.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

LOCAL 560, I.B.T.

(Labor Organization)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

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**I.B.T. Local 560
(County Concrete Corp.)
Cases 22-CC-083895 and 22-CE-084893**

The following are the findings of the Regional Director of the National Labor Relations Board, Region 22:

1. The Charged Party is a labor organization within the meaning of Section 2(5) of the Act.
2. The Charging Party is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board. The Charging Party, a New Jersey corporation with an office and place of business located at 50 Railroad Avenue, Kenvil, NJ is engaged in the supply of ready-mix concrete and other construction materials. Annually, in the course and conduct of its business operations, the Charging Party purchases and receives at its various New Jersey facilities goods valued in excess of \$50,000 directly from points outside the State of New Jersey.
3. Phelps Construction Corp. is an employer within the meaning of Section 2(2) of the Act.
4. At all material times, Anthony Valdner has held the position of president and has been an agent of the Charged Party within the meaning of Section 2(13) of the Act.
5. (a) At all material times, the Charged Party has been engaged in a labor dispute with the Charging Party.
(b) At no material times has the Charged Party been engaged in a labor dispute with Phelps Construction Corp.
6. About March 1, 2012, the Charged Party entered into a Project Labor Agreement ("PLA"), which provides:

The following employees are not subject to the provisions of this Agreement, even though performing work on the project:

2. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of project components, materials, equipment or machinery unless such offsite operations are covered by the New Jersey Prevailing Wage Act (for example, by being dedicated exclusively to the performance of the public works contract or building project and are adjacent to the site of work), or involved in deliveries to the Project site, excepting local deliveries of the following major construction

materials: fill, ready mix, concrete and cement and asphalt, which are covered by this Agreement.

7. By entering into and maintaining the provisions of the PLA described above in paragraph 6, the Charged Party has entered into and maintained an agreement in which the Charged Party has agreed not to do business with any other employer or person.
8. In April 2012, the Charged Party, in support of its dispute with the Charging Party described above in paragraph 5(a), by Anthony Valdner, threatened to file a grievance against Phelps Construction Corp. to enforce the section of the PLA listed above in paragraph 6.
9. By the conduct described above in paragraph 8, the Charged Party has threatened, coerced or restrained Phelps Construction Corp. and other persons engaged in commerce or in industries affecting commerce.
10. An object of the Charged Party's conduct described above in paragraph 8 has been to force or require the Charging Party to enter into an agreement that is prohibited by Section 8(e) of the Act and to force or require Phelps Construction Corp. and other persons to cease handling or otherwise dealing in the products of, and to cease doing business with the Charging Party.
11. By the conduct described above in paragraphs 6 and 7, the Charged Party has been violating Section 8(e) of the Act.
12. By the conduct described above in paragraphs 6, 8, 8, 9 and 10, the Charged Party has been violating Section 8(b)(4)(ii)(A) of the Act.
13. By the conduct described above in paragraphs 5, 8, 9 and 10, the Charged Party has been violating Section 8(b)(4)(ii)(B) of the Act.
14. The unfair labor practices of the Charged Party described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Yes SM Initials No _____ Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Rider to the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. Such order shall be recognized as equivalent to a plea of *nolo contendere* and shall not negate the terms of the Non-Admissions provision. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order *ex parte*, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party LOCAL 560, I.B.T.		Charging Party COUNTY CONCRETE CORPORATION	
By: Name and Title <i>Paul Muntalk</i> Attorney for Local 560	Date 7/17/12	By: Name and Title	Date
Recommended By: <i>Nancy Slahetka</i> Nancy Slahetka, Board Agent	Date 7/23/12	Approved By: <i>J. Michael Johnston</i> Regional Director, Region 22	Date 8-1-12

Yes _____ No _____
 Initials Initials

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By: Name and Title	Date	By: Name and Title <i>John C. Crimi</i> JOHN C. CRIMI	Date 7/19/2012
Recommended By: <i>Nancy Slahetka</i> Nancy Slahetka, Board Agent	Date 7/23/12	Approved By: <i>J. Michael Jyfferson</i> Regional Director, Region 22	Date 8-1-12



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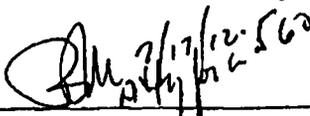
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(Labor Organization)

Dated: _____

By: _____



(Representative)

(Title)

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CV
7/17/12

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Jim
7/17/12