THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOGAN BUS CO., INC., Employer, LOCAL 553, IBT, Petitioner, -and- UNITED CRAFT AND INDUSTRIALWORKERS UNION, LOCAL 91, Intervenor,	Case No.: 02-RC-163227

EMPLOYER'S OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER

Logan Bus Co., Inc. (The Company or the Employer), hereby submits this Opposition to Petitioner's Motion for Reconsideration of the Board's Order in the above captioned matter.

The Petitioner maintains that the Order contains three material errors:

1. That the Board should have ruled that "Specialty Health Care" (357 NLRB, No 83, 2011) overrides, "Met Electrical Testing Co.", 331 NLRB 872 (2000), trumping any weight given to the existence of historical units.

2. That the Regional Director did not find that there are two historical units.

3. That the facts do not support any findings that employees in the Bronx locations have been treated as part of a single unit with those in other locations.

None of these alleged "material errors" can withstand scrutiny. They are mere reiteration of arguments rejected by the Regional Director in the original Decision and Direction of Election (DDE) based on the record as a whole, and then ordered by the Board.

1. On page 1 of its Motion, Petitioner acknowledges that prior bargaining history is a factor to consider in a question of unit determinations and cites pages of the Decision and Director of Election which read: "....the Board has not reached the question of whether its decision in Specialty Health Care applies to multi-facility units or the weight to be given to bargaining history".

   The point was argued and briefed by petitioner in its post hearing brief, and the Board upheld the Regional Director's conclusion in the DDE, finding that there were "no substantial issues warranting review". Now petitioner, unhappy with that Order, wants more details from the Board to explain it. But disagreement with the interpretation of the law does not indicate any "extraordinary circumstance" or "material error" that would be necessary to grant the instant motion. The DDE and the Board's order are based on, and result from, consideration of the record as a whole.

2. In spite of contrived, nonsensical word play intended to obfuscate the clear language on pages 2-3 of the Decision and Director of the Election, the Regional Director explicitly found, and the Board order concurred, that there are two historically bargained for units:

   (1.) Drivers and matrons

   (2.) Shop employees,

   and that each unit contains the employees in the employer's yards in the Bronx, Brooklyn, and Queens.

   The record is replete with uncontested evidence that entails the appropriateness of the decision to maintain the integrity of these two historic units, in accordance with the Act and Board precedent.

3. The integration of employees in each of the units among the various facilities was fully litigated in great detail at the Hearing. Based on the evidence presented, the Regional Director issued the DDE and concluded that the Employer's organization, regular transfer of employees among locations, the similarity of the skills, duties, and of other conditions of employment, as well as the functional integration of the operation, along with

additional factors entails that each unit is a single unit among all of the relevant locations in the Bronx, Brooklyn and Queens, petitioners objections notwithstanding. There is nothing raised by the petitioner to justify or warrant reconsideration.

Conclusion:

For all of the reasons enumerated above, the motion before the Board for reconsideration should be denied.

Dated: Syosset, New York
September 8, 2016

Respectfully submitted,

By: _____

Mark Portnoy
Portnoy, Messinger, Pearl & Associates, Inc.
6800 Jericho Turnpike, Suite 218E
Syosset, New York 11791
516-921-3400
mbportnoy@pmphr.com

Via Email

Jae W. Chun
jchun@friedmananspach.com
Friedman & Anspach

Karen P. Fernbach
Karen.fernbach@nlrb.gov
Regional Director, Region 2

Wendy Shepherd
wshepherd@bislawfirm.com
Attorney for United Craft and Industrial
Workers Union, Local 91