

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ENVIRONMENTAL CONTRACTORS, INC.,  
KIELCZEWSKI CORPORATION AND THEIR  
ALTER EGO, SINGLE EMPLOYER AND/OR  
SUCCESSOR, BE CONSTRUCTION CORPORATION

and

Cases 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA

**EXHIBITS 1 THROUGH 15 TO GENERAL COUNSEL'S MOTION TO TRANSFER  
AND CONTINUE CASE BEFORE THE BOARD AND MOTION FOR DEFAULT  
JUDGMENT**

**EXHIBIT 1**

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

ENVIRONMENTAL CONTRACTORS, INC.,  
AND KIELCZEWSKI CORP., ALTER EGOS  
AND A SINGLE EMPLOYER

and

Case No. 22-CA-089865

LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA

*Bert Dice-Goldberg, Esq.*, for the General Counsel.

DECISION

Statement of the Case

**STEVEN DAVIS, Administrative Law Judge:** Based on a charge and a first amended charge filed on September 21, 2012 and August 28, 2013, respectively, by Local 78, Laborers International Union of North America (Union), a complaint was issued on July 31, 2013 against Environmental Contractors, Inc., (ECI) and Kielczewski Corp. (KC), Alter Egos and a Single Employer, herein called ECI, KC or Respondents.

The complaint alleges and the answer admits that, at all material times, ECI and KC have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. The complaint also alleges and the answer also admits that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

The complaint further alleges and the Respondents deny that ECI established KC for the purpose of evading its responsibilities under the Act, that both companies are alter egos and a single employer within the meaning of the Act, and that they are a single-integrated business enterprise and a single employer within the meaning of the Act.

The complaint also alleges that following the Board's certification of the Union as the exclusive collective-bargaining representative of ECI's unit employees, the Respondents refused the Union's request to recognize and bargain with it. It is alleged that, at the same time, the Respondents changed the wages and benefits they paid to unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse.

The Respondents' answer denied the material allegations of the complaint, other than those which they admitted, including those set forth above, and on September 24, 2013, a hearing was held before me in Newark, NJ.<sup>1</sup> Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the brief filed

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<sup>1</sup> Following the close of the hearing I received GC Exhibits 24 and 24, a video recording and transcript of a conversation between Union organizer Leonardo Naranjo and Respondent supervisor Peter Cybura. They are hereby received in evidence.



Re: Adjournment

Pursuant to my telephone calls of 9-23-13 to your Honor and our adversary, I will be unable to appear tomorrow morning in the above matter. ECI 22-CA-089865. Thank you.

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Various subpoenas were issued by General Counsel to the Respondents for the appearance of Slawomir Kielczewski on September 24 at this hearing. A notice attached to the charge states that the hearing will be held on the date and hour indicated and that postponements will not be granted unless good and sufficient grounds are shown and the formal requirements are met, including that the request must include the grounds for the request, and the tentative dates for the rescheduled hearing. In addition, the positions of all parties must be ascertained and set forth in the request and copies must be simultaneously served on the other parties. The notice states that "except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing."

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Neither Respondents' attorney Waldo Carkhuff nor his clients, the Respondents, appeared at the hearing. The hearing opened at 10:34 a.m. at which time I denied the Respondents' request for postponement. The General Counsel's first witness, Hernandez, testified briefly. At about 11:00 a.m., I asked the General Counsel to phone Carkhuff and advise him that his request for a postponement was denied and that I would adjourn the hearing for one hour to permit him to attend the hearing if he wished.

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During the recess, the General Counsel phoned Carkhuff and so advised him. He stated that Carkhuff said that it was "impossible" for him to attend the hearing because he was "doing something medical." The General Counsel sent him a fax and e-mail confirming their conversation. The hearing resumed at 12:16 p.m. Neither Carkhuff nor his clients appeared.

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I affirm my ruling denying the Respondents' request for postponement. No details were given of the alleged "conflict" Carkhuff had with the hearing date. Presumably, he would have been able to resolve the alleged conflict earlier since he had been advised of the hearing date nearly two months before. When given the opportunity to appear at the hearing, Carkhuff claimed that "something medical" made it impossible for him to appear. Again, no details were provided. The request for postponement lacks merit and is denied.

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### III. The Facts

#### A. Background

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On May 1, 2007, the Building Contractors Association of New Jersey (Association) which represented ECI and other employers in the construction industry, entered into a collective-bargaining agreement with the New Jersey Building Laborers District Council which was effective until April 30, 2012. That agreement was a pre-hire Section 8(f) contract.

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ECI's answer admits that at all times prior to December 29, 2011, it was an employer-member of an Association which represented it and other employers in the construction industry, and that it authorized the Association to represent it in negotiating and administering collective-bargaining agreements with the Union. ECI's answer further admits that on about December 29, 2011, it gave timely notice that it was revoking its authorization to the Association to negotiate on its behalf, and terminating the collective-bargaining agreement.

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On March 7, 2012, the Union filed a petition seeking to represent the employees of ECI. The Union won an election held on April 11, 2012, and thereafter, on April 23, the Union was

certified as the exclusive collective-bargaining representative of the employees of ECI in the following unit:

5 All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

10 The complaint alleges that, at all times since about April 23, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

### B. The Request to Bargain

15 Hernandez and Business Agent Radosaw Korek testified that on April 11, the day of the election, after the ballots were counted and the Tally of Ballots was distributed to the parties, they attempted to speak to Slawomir Kielczewski, the president of ECI.<sup>3</sup> They approached him and offered a handshake, and said "so let's talk, let's open and follow up our future relationship." Slawomir "wrestled with us, pushed us out of the office," telling them twice, "get the fuck out of my office." Later, Korek entered the office and told Slawomir that the Union won the election. Slawomir stepped outside, and "kicked us out on the sidewalk," telling them to "get the fuck out of my property."<sup>4</sup>

25 Korek testified that, following the election, he attempted to speak to the employees to learn if their working conditions had changed. He left several phone messages and visited their homes, but received no response from the workers.

30 Korek called Slawomir at least three times in June to ask him about a new company, Kielczewski Corp., that the Union believed had been formed and had begun performing jobs. He also attempted to speak to Slawomir's brother, Wesley Kielczewski. On each occasion, Slawomir and Wesley refused to speak about the Union, Slawomir saying "we have nothing to discuss in this matter about the union issue between my company and me." Wesley told him he had to speak to Slawomir.

35 Union organizer Oscar Borreo testified that he and organizer Leonardo Naranjo visited a jobsite at 133 Summit Avenue in Summit, New Jersey on June 21, 2012. Naranjo recorded his conversation with supervisor Peter Cybura.<sup>5</sup> Apparently, Naranjo posed as an employee seeking work. Cybura identified himself as the supervisor and asked Naranjo if he was "union." Naranjo denied being "union." Cybura said that the Employer "is not with the Union" because union workers were lazy and earn about \$30 per hour, whereas non-union employees earn \$10 or \$15 per hour.

45 <sup>3</sup> In various documents filed in 2010 through 2012 by ECI with the New Jersey Department of Labor, and documents issued by that agency, Slawomir Kielczewski is listed as the president of ECI. Because several of the Respondents' officials have the same last name, I will refer to them by their first names.

<sup>4</sup> Inasmuch as the Respondent made no appearance at the hearing and presented no witnesses, the testimony of all the witnesses who testified in behalf of the General Counsel are uncontradicted. I credit their testimony.

50 <sup>5</sup> Cybura is listed on KC payroll documents as being "NJ Supervisor" and a website maintained by KC states that he is the "project manager/estimating Environmental Services."

Naranjo asked for the name of the company, adding that he could not see the name of the company on the truck. Cybura said "because we paint this. Because that was union company, we not union company anymore." He added that prior to that time the name of the company was Environmental, but it was now called Kielczewski Corporation. Cybura added that the owner of Kielczewski is the same owner of Environmental – "the same owner. He just change the name." Cybura told the Union agents that when they work in New York "we are with the Union in New York, Local 78" but the company no longer works in New York.

A "Notification of Asbestos Abatement" signed by Slawomir for that job listed KC as the abatement contractor. However, the vehicle used by KC on that job is registered to ECI but bore no KC logo. Moreover, a notebook in the cab of the truck entitled "asbestos abatement project log book" bore the notations "Summit Parmely Apt. Building, 133 Summit Avenue, ECI Project Number 12023-AR."

Organizer Borreo testified that he visited ECI's office at 235 Watchung Avenue and photographed the vehicles there. Some of the trucks bore an ECI logo, and others did not.

Organizer Saverio Samarelli and Vila testified that they visited Blair Academy on October 4, 2012. They asked in the office for "ECI." The receptionist, David S.,<sup>6</sup> said "you mean the abatement contractor." They said "yes," and the receptionist said "he's under Kielczewski Corp.," Vila spoke with Wesley about ECI, with Wesley saying that there were issues with employees making personal phone calls at work and not being productive. Wesley said that "any issues regarding the union should be directed to his brother, the owner." Samarelli left his business card with Wesley, and asked that his brother call him. Received in evidence was a photograph of a sign bearing Kielczewski Corp's name at the site and a truck. Samarelli stated that he saw a man wearing a shirt bearing an ECI logo at the jobsite.

On October 15, 2012, Samarelli visited a jobsite in Newark where he spoke to and recorded his conversation with Wesley who recognized Samarelli from his visit on October 4. Samarelli identified himself as being from the International Union, but working in behalf of Local 78. He attempted to learn what type of work the company was doing at the jobsite and how many employees worked there. Wesley was generally noncommittal, advising Samarelli to speak with his brother who was the boss of Environmental Contracting and remarking "since you're union and I'm not union I really can't disclose too much information."

Wesley complained about the high labor cost when the company was a union contractor, paying his employees over \$50 per hour including benefits. He admitted that he was now paying his employees perhaps \$20 less per hour since he did not pay them any benefits. Wesley conceded that compared to the wages he previously paid, there was a "big difference," estimating that if employees worked 1,000 hours, the company would save \$20,000. Wesley added "that answers your question. If you have a job, if you're talking about millions, if somebody wishes to go non-union then you get an even bigger difference. You know what I'm saying?"

When asked if stiff competition was the reason his company went "non-union", Wesley answered "well yes, yes and no. I don't even know what's the main reason. I'm not going there. I don't want to speak about something." Wesley also complained that he believed that his competitors who do prevailing wage work do not pay their employees the proper wage, but his

<sup>6</sup> No further identification of the man was made.

company does – “my problem is my competition is in the position [that] their numbers are lower.”

### **C. The Alter Ego and Single Employer Status of the Respondents**

5 The Respondents admit that they have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. The Respondents also admit that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

10 ECI applied for an asbestos license in February, 2011. The application states that ECI was incorporated in December, 1993, and lists Slawomir Kielczewski as its president. Numerous jobs were listed as having been done in 2010 with the following scope: asbestos abatement, demolition, mold remediation and asbestos remediation,

15 Kielczewski Corporation filed an application for an asbestos license in May, 2012. It stated that it was incorporated on December 22, 2010, and listed its president as Slawomir Kielczewski. A website maintained by KC states that KC “is a company that is comprised of former employees of EC” and then directs the reader to ECI’s website for the credentials of those workers.

20 Both ECI and KC’s applications list their address as 235 Watchung Avenue, West Orange, New Jersey. That location is owned by Mariola Kielczewski, the ex-wife of Slawomir, who leased it to ECI in August, 2010.

25 The KC application contains a letter dated May 8, 2012, in which Slawomir advises the New Jersey Asbestos Control & Licensing department that certain equipment will be sold to KC “in the future.” The lengthy list of equipment to be sold, according to Hernandez, includes “pretty much all of the equipment that he possess at ECI.” On May 24, 2013, KC was issued an asbestos license which permitted it to “perform any type of asbestos work.”

30 Certain unit employees of ECI were retained by KC. They include Nathaniel Couram, Serhiy Drozdyak, Henryk Maciorowski, Jacek Marosz, Piotr Piecuch, and Wieslaw Piecuch. ECI clerical employees Mariola Kielczewska, Barbara Reed, and Rafal Skrzypcak also continued their employment with KC.

35 Bids for work and proposals for both companies were prepared by Slawomir and Cybura. ECI continued to bid on work in its name. In January, 2012 and thereafter, it bid on certain work. ECI’s proposals noted that “work performed after April 30, 2012 will be open shop only” or stated that “work is priced to be completed non-union after May 1, 2012.”

40 Certain of KC’s proposals for jobs dated April, 2012 and later also stated that “work performed after April 30, 2012 will be open shop only.” Also, exclusions noted are “union labor” and “union harmony.”

45 Both ECI and KC use the same vendors. For example, both use Circle Recycling, Inc., Circle Rubbish Removal, Inc., and Sky Environmental Services, Inc. Both companies have the same account number at Home Depot Credit Services, American Express and Valley National Bank.

### **D. The Change in the Employees’ Terms and Conditions of Employment**

50 The complaint alleges that following the Board’s certification of the Union as the

5 exclusive collective-bargaining representative of ECI's unit employees, the Respondents changed the wages and benefits they paid to unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse. The evidence supports that allegation.

10 The Respondents' payroll records in evidence show that ECI's unit employees were paid according to the Association-Union contract, but then when they were employed by KC after June, 2012, their wages and benefits changed.

15 For example, Wieslaw Piecuch was classified as a Laborer Class A when employed by ECI, and earned \$29.05 per hour. He received pension, health and "other" benefits of \$77.20, .40, and \$109.36, respectively.<sup>7</sup> At KC in July, 2012, however, he received a wage rate of \$29.85 per hour, and health benefits only.

20 Similarly, Piotr Piecuch, classified as a cleaner and Laborer Class A at ECI, earned a wage rate of \$29.05 and pension, health and "other" benefits of \$77.20, .40, and \$109.36.<sup>8</sup> However, at KC, in May, 2012, he earned \$35.00 per hour, but no benefits.

Further, Nathaniel Couram, a cleaner and asbestos handler, received \$29.00 per hour at ECI, and pension, health and "other" benefits of \$62.64, .40, and \$118.88, respectively.<sup>9</sup> However, in June, 2012, he received a wage rate of \$35.00 per hour and no benefits at KC.

## 25 Analysis and Discussion

### I. The Alter Ego and Single Employer Status of the Respondents

30 When the General Counsel alleges that an entity is the alter ego of another company, subject to the latter's legal and contractual obligations, the General Counsel has the burden of establishing that status. *U.S. Reinforcing, Inc.*, 350 NLRB 404, 404 (2007). The determination of alter ego status is a question of fact for the Board, resolved by an examination of all of the attendant circumstances.

35 The Board generally will find an alter ego relationship when two entities have substantially identical ownership, management, business purposes, operations, equipment, customers and supervision. Not all of these indicia need be present, and no one of them is a prerequisite to finding an alter ego relationship. Unlawful motivation is not a necessary element of an alter ego finding, but the Board also considers whether the purpose behind the creation of the suspected alter ego was to evade responsibilities under the Act. *McCarthy Construction Co.*, 40 355 NLRB 50, 52 (2010), adopted in 355 NLRB 365 (2010); *U.S. Reinforcing*, above.

45 The Respondents admit that they have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. In addition, some of the same employees of ECI were retained by KC to perform the same work. The same clerical staff was employed. The same vendors and certain vendor account numbers continued to be used by KC. The Respondents also admit that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

50 <sup>7</sup> Those benefits were received for the payroll dated January 4, 2012.

<sup>8</sup> Those benefits were received for the payroll dated January 4, 2012.

<sup>9</sup> Those benefits were received for the payroll dated February 27, 2012.

In *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942), the Supreme Court said that "[w]hether there was a *bona fide* discontinuance and a true change of ownership or merely a disguised continuance of the old employer is a question of fact." The Supreme Court noted that if "there was merely a change in name or in apparent control there is added ground for compelling obedience." In such cases, where there is only a technical change in the structure or identity of the employing entity, "without any substantial change in its ownership or management," it has been held that the new employer "is in reality the same employer" and subject to the same legal and contractual obligations. *Howard Johnson v., Detroit Joint Board*, 417 U.S. 249, 252 fn. 5, 262 fn. 9 (1974).

The Respondents deny that ECI established KC for the purpose of evading its responsibilities under the Act, that both companies are alter egos and a single employer within the meaning of the Act, and that they are a single-integrated business enterprise and a single employer within the meaning of the Act.

The evidence is clear that ECI and KC are alter egos. First, as set forth above, they admit to the facts establishing an alter ego relationship, but deny the conclusion that must be drawn therefrom. They also admit that KC was established by ECI as a disguised continuance of ECI.

Also, it is clear that KC was formed for the purpose of evading its responsibilities under the Act. The Respondents believed that operating as a union company hindered its ability to be competitive in the marketplace. Thus, supervisor Cybura and Slawomir's brother Wesley complained about the high cost of Union wages and benefits, whereas, as a non-union company, the workers were paid less since they received no benefits. Cybura admitted that ECI's name was obliterated from its trucks because "we not union company anymore."

Similarly, the Respondents' proposals for jobs stated that after April 30, 2012, bids for work would be "open shop only" and priced "non-union."

The Respondents thus had a plan to reduce labor costs. Pursuant to that plan, after their contract with the Association expired, they refused to recognize the Union, withdrew recognition from it and refused to bargain with it following its certification, and changed the compensation paid to its employees.

The timing of the undisputed events herein and the Respondents' actions confirm this plan. In late December, 2011, the Respondents gave timely notification that it was withdrawing from the Association and did not authorize it to bargain in its behalf following the expiration of its contract with the Association on April 30, 2012. They notified their prospective customers that following April 30, 2012, their bids would be based on non-union rates, and the Respondents chose to ignore the Union's certification on April 23, 2012.

Thus, ECI made clear its intent to operate KC as a non-union contractor with lower labor costs and thereby avoid its obligation to bargain with the Union which was certified as their employees' exclusive collective-bargaining representative. *E.L.C. Electric, Inc.*, 359 NLRB No. 20, slip op. at 9 (2012).

I also find that the Respondents are a single employer. Two or more ostensibly separate entities may be found to constitute a single employer where they constitute a single integrated enterprise. In determining whether such a relationship exists, the Board and courts consider four factors: common ownership, common management, interrelated operations, and centralized

control of labor relations. *Radio Local 1264, IBEW v. Broadcast Service of Mobile*, 380 U.S. 255, 256 (1965). None of the four factors is controlling, and not all factors need be present to support a single employer finding. Rather, single employer status depends on all the circumstances and is characterized by the absence of an arm's-length relationship between  
 5 unintegrated companies. *Flat Dog Productions, Inc.*, 347 NLRB 1180, 1181-1182 (2006).

Here, Slawomir was the main actor of both companies. He owned and was the president of both, he filed documents with regulatory agencies on behalf of both, was viewed by supervisors of KC as being in charge of that company. Those supervisors told the Union agents  
 10 to speak to Slawomir for information regarding KC. The supervisors and managers were the same for both companies. Their operations were interrelated. Both did the same type of work and Slawomir bid on projects for both. They used the same location, certain of the same unit employees, the same clerical workers, vehicles owned by ECI were used by both companies, KC took over the same equipment used by ECI, the same vendor account numbers were used,  
 15 and there was no evidence that anyone other than Slawomir determined the labor relations of the two companies.

I accordingly find and conclude that ECI and KC were a single integrated enterprise, and a single employer.  
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## II. The Refusal to Bargain

The complaint alleges that following the Board's certification of the Union, the Respondents refused the Union's request to recognize and bargain with it. As set forth above,  
 25 the Union's request to bargain, even immediately following its election victory on April 11, was met with curses and eviction from the Respondents' office. No clearer message could be sent.

Thereafter, following the April 23 certification, Union agent Korek phoned president Slawomir at least three times. Each time, Slawomir refused to speak with him about the Union's  
 30 relationship with the Respondents. Other attempts to speak with Wesley, Slawomir's brother, were similarly unproductive, with the Union's agents being told to speak to Slawomir. Union business cards were left with Slawomir's brother Wesley, who was asked to have Slawomir call him, but he did not.

Union agent Naranjo's June 21 conversation with supervisor Cybura is reflective of the Respondents' motivation. At a jobsite, Cybura told him they ECI's name was removed from the  
 35 truck because "we not union company anymore."

Having found that the Respondents are a single employer, the bargaining unit remained intact. I find that, as a single employer, the Respondents had a continuing obligation to  
 40 recognize and bargain with the Union as the exclusive bargaining representative of the unit employees, and that the bargaining unit remained an appropriate unit following the establishment of KC. I find that the Respondents violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union.

I also find that the Respondents unilaterally changed the wages and benefits it paid to its employees. As set forth above, the unit workers at ECI were paid the wage rate, pension, health  
 45 and "other" benefits pursuant to the Association contract, but when employed by KC, they were paid only wages without any other benefits. I understand that the wage rate at KC was slightly  
 50 higher than at EC, but employees were receiving much less in compensation since no contributions were made to any benefit funds.

Regardless of the amount of the wages received by the employees, the violation is the Respondents' making unilateral changes in employees' compensation and their failure to notify the certified Union of those changes, and their failure to offer the Union an opportunity to bargain with them concerning those changes.

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I also find that since KC is the alter ego of ECI, KC, and to the extent that ECI is still operating, they are obligated to comply with the terms of the collective-bargaining agreement that ECI entered into with the Association on May 1, 2007, and which expired on April 30, 2012. The evidence supports a finding that since about June 1, 2012, ECI and KC failed and refused to apply the terms and conditions of that collective-bargaining agreement, including the contractual and fringe benefit provisions therein, which are mandatory subjects of bargaining, and did so without the Union's consent. Accordingly, ECI and KC, as its alter ego, violated Section 8(a)(5) and (1) of the Act by failing and refusing to apply the terms of the collective-bargaining agreement that ECI entered into with the Association, and by failing and refusing to bargain collectively with the Union as the exclusive collective-bargaining representatives of the bargaining unit employees of ECI and KC.

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### Conclusions of Law

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1. The Respondents, Environmental Contractors, Inc., and Kielczewski Corp., are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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2. Local 78, Laborers International Union of North America, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material herein, Environmental Contractors, Inc., and Kielczewski Corp., have been alter egos and a single employer.

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4. By establishing Kielczewski Corp. as a disguised continuation of Environmental Contractors, Inc. for the purpose of evading its responsibilities under the Act, the Respondents have violated Section 8(a)(5) and (1) of the Act.

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5. By refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees of Environmental Contractors, Inc., employed in the following appropriate collective-bargaining unit, the Respondents have violated Section 8(a)(5) and (1) of the Act:

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All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

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6. By changing the wages and benefits of unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse, the Respondents violated Section 8(a)(5) and (1) of the Act.

### Remedy

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Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

5 The Respondents will be ordered to recognize and, on request, bargain with Local 78, Laborers International Union of North America, as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document. The Respondents shall also be required to rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after April 23, 2012, and to make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6<sup>th</sup> Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

15 The Respondents will be ordered to restore any or all of the terms and conditions of employment of its unit employees as established by the collective-bargaining agreement which expired on April 30, 2012. They shall also be required to make all contractually required contributions to the Union's benefit funds that it failed to make, including any additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and to make the employees whole for any expenses they may have incurred as a result of the Respondents failure to make such payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9<sup>th</sup> Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, *New Horizons for the Retarded*, and *Kentucky River Medical Center*, above.

25 The Respondents additionally shall be ordered to (1) compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum and (2) file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters, as set forth in *Latino Express, Inc.*, 359 NLRB No. 44 (2012).

30 Where employers, as here, have failed and refused to bargain in good faith with a certified union, the Board will ensure that such a union has at least 1 year of good faith bargaining during which its majority status cannot be questioned by extending the certification year. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Under the circumstances here, I recommend that the 1-year extension shall commence to run from the date when good faith bargaining begins.

35 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>10</sup>

#### 40 ORDER

The Respondents Environmental Contractors, Inc., and Kielczewski Corp, West Orange, New Jersey, their officers, agents, successors, and assigns, shall

- 45 1. Cease and desist from

50 <sup>10</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.



(a) Refusing to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of their employees in the following appropriate bargaining unit:

5 All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

10 (b) Making unilateral changes to the terms and conditions of employment of their bargaining unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

15 2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and continue to recognize the Union as the certified exclusive agent of their employees in the unit described below for one year commencing on the date good faith bargain begins with the Union.

25 (b) Rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after April 23, 2012, and make the unit employees whole for any loss of earnings and other benefits attributable to the unilateral changes they have made.

30 (c) At the Union's request, restore any or all of the terms and conditions of employment of unit employees as established by the collective-bargaining agreement which expired on April 30, 2012.

35 (d) Make their unit employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

40 (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

45 (f) Within 14 days after service by the Region, post at their facility in West Orange, New Jersey, copies in English, Spanish and Polish of the attached notice marked "Appendix."<sup>11</sup>

50 <sup>11</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."



APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
Choose representatives to bargain with us 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 refuse to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of our employees in the following appropriate bargaining unit:

All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

WE WILL NOT make unilateral changes to your terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as your exclusive collective-bargaining representative with respect to your wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and WE WILL continue to recognize the Union as your certified exclusive agent for 1 year commencing on the date we begin to bargain in good faith with the Union.

WE WILL rescind, on the Union's request, any or all of the unilateral changes to your terms and conditions of employment made on or after June 1, 2012, and make you whole for any loss of earnings and other benefits attributable to the unilateral changes we have made.

WE WILL at the Union's request, restore any or all of your terms and conditions of employment as established by the collective-bargaining agreement which expired on April 30, 2012.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of our discrimination against you.

ENVIRONMENTAL CONTRACTORS, INC., AND KIELCZEWSKI CORP., ALTER EGOS AND A SINGLE EMPLOYER

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_ (Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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. You may also obtain information from the Board's website: www.nlr.gov.

20 Washington Place, 5th Floor

Newark, New Jersey 07102-3110

Hours: 8:30 a.m. to 5 p.m.

973-645-2100.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784

**EXHIBIT 2**

**EXHIBIT 2**

West Orange, NJ

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ENVIRONMENTAL CONTRACTORS, INC.,  
AND KIELCZEWSKI CORP., ALTER EGOS  
AND A SINGLE EMPLOYER

and

Case 22-CA-089865

LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA

**ORDER**

On January 13, 2014, Administrative Law Judge Steven Davis of the National Labor Relations Board issued his Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. The Administrative Law Judge found that the Respondent has engaged in certain unfair labor practices, and recommended that it take specific action to remedy such unfair labor practices.

No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, the Board adopts the findings and conclusions of the Administrative Law Judge as contained in his Decision, and orders that the Respondent, Environmental Contractors, Inc., and Kielczewski Corp., alter egos and a single employer, their officers, agents, successors, and assigns, shall take the action set forth in the recommended Order of the Administrative Law Judge.

Dated, Washington, D.C., February 27, 2014.

By direction of the Board:

/s/Roxanne L. Rothschild

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Associate Executive Secretary

**EXHIBIT 3**

**EXHIBIT 3**

June 16, 2014

ACO-093

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

ENVIRONMENTAL CONTRACTORS, INC.  
AND KIELCZEWSKI CORP., ALTER EGOS  
AND A SINGLE EMPLOYER

Respondent

No. 14-2815

Board Case No.:  
22-CA-089865

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Before: RENDELL, FISHER and GREENAWAY, Jr., Circuit Judges

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Environmental Contractors, Inc. and Kielczewski Corp., alter egos and a single employer, its officers, agents, successors, and assigns, enforcing its order dated February 27, 2014, in Case No. 22-CA-089865, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent Environmental Contractors, Inc. and Kielczewski Corp., alter egos and a single employer, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT

s/ Joseph A. Greenaway, Jr.  
Circuit Judge

DATED: July 3, 2014

PDB/cc: All Counsel of Record

July 3, 2014

**NATIONAL LABOR RELATIONS BOARD**

v.

**ENVIRONMENTAL CONTRACTORS, INC. AND KIELCZEWSKI CORP.,  
ALTER EGOS AND A SINGLE EMPLOYER**

**ORDER**

Environmental Contractors, Inc., and Kielczewski Corp, West Orange, New Jersey, their officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of their employees in the following appropriate bargaining unit:

All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

- (b) Making unilateral changes to the terms and conditions of employment of their bargaining unit employees.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and continue to recognize the Union as the certified exclusive agent of their

employees in the unit described below for one year commencing on the date good faith bargain begins with the Union.

- (b) Rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after April 23, 2012, and make the unit employees whole for any loss of earnings and other benefits attributable to the unilateral changes they have made.
- (c) At the Union's request, restore any or all of the terms and conditions of employment of unit employees as established by the collective-bargaining agreement which expired on April 30, 2012.
- (d) Make their unit employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at their facility in West Orange, New Jersey, copies in English, Spanish and Polish of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since June 1, 2012.

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

#### **FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us 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** refuse to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of our employees in the following appropriate bargaining unit:

All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

**WE WILL NOT** make unilateral changes to your terms and conditions of employment.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as your exclusive collective-bargaining representative with respect to your wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and **WE WILL** continue to recognize the Union as your certified

exclusive agent for 1 year commencing on the date we begin to bargain in good faith with the Union.

WE WILL rescind, on the Union's request, any or all of the unilateral changes to your terms and conditions of employment made on or after June 1, 2012, and make you whole for any loss of earnings and other benefits attributable to the unilateral changes we have made.

WE WILL at the Union's request, restore any or all of your terms and conditions of employment as established by the collective-bargaining agreement which expired on April 30, 2012.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of our discrimination against you.

Environmental Contractors, Inc. and Kielczewski Corp., Alter Egos and a Single Employer

(Employer)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

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Hours: 8:30 a.m. to 5 p.m.  
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**EXHIBIT 4**

**EXHIBIT 4**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**ENVIRONMENTAL CONTRACTORS, INC.,  
KIELCZEWSKI CORPORATION AND THEIR  
ALTER EGO, SINGLE EMPLOYER AND/OR  
SUCCESSOR, BE CONSTRUCTION CORPORATION**

**and**

**Cases 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957**

**LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA**

**ORDER CONSOLIDATING COMPLAINT, COMPLIANCE SPECIFICATION  
AND NOTICE OF HEARING**

Pursuant to Sections 102.33 and 102.54(b) of the Rules and Regulations of the Board, and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 22-CA-089865, 22-CA-136700, 22-CA-145173 and 22-CA-172597, which are based on charges filed by the Union against Respondents are consolidated and that the Consolidated Complaint is consolidated with the Compliance Specification in this matter.

This Consolidated Complaint, Compliance Specification and Notice of Hearing is based on charges filed by Local 78, Laborers International Union of North American, (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (the Act) and sections 102.15 and 102.54 of the Rules and Regulations of the National Labor Relations Board (Board) and alleges that Environmental Contractors, Inc.,

(Respondent ECI), Kielczewski Corporation (Respondent Kielczewski Corp.) and BE Construction Corporation (Respondent BE Construction and collectively Respondents), alter egos, a single employer and/or successor, have violated the Act as described below.

1. (a) Charge 22-CA-136700 was filed by the Union on September 12, 2014 and a copy was served by regular mail on Respondents on September 15, 2014.

(b) Charge 22-CA-145173 was filed by the Union on January 23, 2015 and a copy was served by regular mail on Respondents on January 28, 2015.

(c) Charge 22-CA-172957 was filed by the Union on March 31, 2016 and a copy was served by regular mail on Respondents on March 31, 2016.

2. At all material times, Respondents have been corporations with an office and place of business in West Orange, New Jersey (Respondents' facility), and have been contractors in the construction industry performing residential and commercial demolition, asbestos abatement, mold and lead removal.

3. At all material times, Respondents have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership.

4. About December 13, 2013, Respondent BE Construction was established by Respondent Kielczewski as a disguised continuation of Respondent Kielczewski.

5. Respondent Kielczewski established Respondent BE Construction, as described above in paragraph 4, for the purpose of evading its responsibilities under the Act.

6. Based on the operations and conduct described above in paragraphs 2 through 5, Respondent Kielczewski and Respondent BE Construction are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

7. At all material times, Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common administration, equipment, purchasing and sales; and have held themselves out to the public as a single-integrated business enterprise.

8. Based on its operations described above in paragraph 7, Respondents constitute a single integrated business enterprise and a single employer within the meaning of the Act.

9. In conducting their operations described above in paragraph 2, during the 12-month period ending June 1, 2017, Respondents performed services valued in excess of \$50,000 in States outside the State of New Jersey.

10. At all material times, Respondents have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

11. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

12. The following employees of Respondents (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time building and  
construction laborers employed by the

Employer in the State of New Jersey, but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

13. On April 23, 2012, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

14. At all times since about April 23, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

15. On January 13, 2014, Administrative Law Judge (ALJ) Steven Davis issued his Decision and Order in Case 22-CA-089865, finding Respondent ECI and Respondent Kielczewski Corp. were alter egos and a single employer and that Respondent Kielczewski was a disguised continuance of Respondent ECI, established to evade its responsibilities under the Act.

16. ALJ Davis also found that Respondent ECI and Respondent Kielczewski violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union and by reducing wages and benefits of unit employees without notice to the Union or providing the Union with an opportunity to bargain over the changes.

17. On February 27, 2014 the Board affirmed ALJ Davis's Decision.

18. On July 3, 2014 the United States Court of Appeals for the Third Circuit enforced the Board's Order in *National Labor Relations Board v. Environmental Contractors, Inc. and Kielczewski Corp., alter egos and a single employer*, Case 14-2815 (3d Cir., July 3, 2014).

19. On about June 16, 2014, the Union again requested that Respondents recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

20. Since about June 16, 2014, Respondents have failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

21. Since about March 1, 2014, Respondents have changed the wages and benefits of the Unit by reducing wages and benefits of the Unit without notice to the Union and without affording the Union an opportunity to bargain with the Respondents.

22. Since about November 17, 2014, the Union has requested orally and in writing, that Respondents furnish the Union with the following information: payroll and financial information necessary for a payroll audit.

23. The information requested by the Union, as described above in paragraph 22 is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

24. Since about December 26, 2014, Respondents, by Slawomir Kielczewski, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 22.

25. About January 1, 2014, Respondent BE Construction purchased the business of Respondent Kielczewski Corp., and since then has continued to operate the business of Respondent Kielczewski Corp. in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Respondent Kielczewski Corp.

26. Based on its operations described above in paragraph 25, Respondent BE Construction has continued the employing entity and is a successor to Respondent Kielczewski Corp.

27. Before engaging in the conduct described above in paragraph 25, Respondent BE Construction was put on notice of Respondent Kielczewski Corp.'s actual liability in Board Case 22-CA-089865 orally, by Sławomir Kielczewski, President, Respondent Kielczewski Corp., to Barbara Reed the President and an agent of Respondent BE Construction.

28. Based on the conduct and operations described above in paragraphs 25 through 27, Respondent BE Construction has continued the employing entity with notice of Respondent Kielczewski Corp.'s actual liability to remedy its unfair labor practices, and Respondent BE Construction is a successor to Respondent Kielczewski Corp.

29. By the conduct described above in paragraphs 19 through 24, Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

#### REMEDY

As part of the remedy for the unfair labor practices alleged above in paragraphs 16 and 19 through 24, the General Counsel seeks an Order requiring that Respondents send, by United States mail, copies of the Notice to Employees to all individuals employed in the Unit since April 23, 2012.

General Counsel also seeks all other relief that may be just and proper to remedy the unfair labor practice alleges.

### COMPLIANCE SPECIFICATION

WHEREFORE, in order to liquidate the amount owed by Respondent and to avoid unnecessary cost or delays, the undersigned issues this compliance specification and alleges as follows:

1. As a result of the conduct described above in paragraphs 16 and 21 of the Consolidated Complaint, bargaining unit employees are entitled to backpay in the manner and amount computed as follows and reflected in **ATTACHMENT A**:

- (a) The backpay period for bargaining unit employees begins on April 23, 2012, the date Respondents unilaterally changed unit employees' terms and conditions of employment, and the backpay period has not ended.
- (b) An appropriate measure of the earnings that all bargaining unit employees would have received during the backpay period is based on an average of the actual hours worked or projected to have been worked by all employees during the backpay period. Using this formula, the earnings estimations are calculated on the average hours worked per pay period based on records provided by Respondent Kielczewski Corp.
- (c) The average weekly hours worked by employees was determined by reviewing Respondent ECI's payroll for the time period 1/1/2012 through 4/21/2013. There was work available during 44 weeks during that period. The total amount of hours worked during the review period was divided

by 44 weeks to get the average number of hours worked per week. There were 5372 total number of hours worked by bargaining unit employees during the payroll review period. There were 44 weeks of work during that period. The total number of hours worked (5372) divided by the number of weeks in which there was work (44), equals 122.09 of average hours worked per week/pay period.

- (d) There are 268 weeks in the backpay period starting 4/23/2012 and calculated through 6/17/2017. Respondents owe 122.09 hours of pay for each of these weeks. (268 weeks X 122.09 hours per week = 32,720 total hours owed.)
- (e) The backpay was calculated using the Class A Rate of \$30.55 per hour from the May 1, 2007 extended collective bargaining agreement. 32,720 hours owed X \$30.55 per hour = \$999,596 backpay owed by Respondents.
- (f) The Backpay was reduced by interim earnings. Respondent Kielczewski Corp.'s payroll shows total Interim Earnings from 1/1/2012 through 4/21/2013 of \$168,296.22. Not all of this timeframe falls within the backpay period. The \$168,296.22 was divided by 6 calendar quarters for the period 1/1/2012 through 4/21/2013 for which payroll records were analyzed. \$168,296.22 divided by 6 calendar quarters, equals \$28,049.27 per quarter. This interim earnings amount was entered on the

BackpayTEC calculation for each quarter falling within the backpay period.

- (g) Respondent BE Construction's payroll shows total interim earnings from 3/24/2016 through 4/21/2016 of \$42,893.77. All of this payroll timeframe falls within the backpay period, so the \$42,893.77 was divided by 2 calendar quarters to equal \$21,446.89 each quarter. This amount was entered as interim earnings for each of 2016 QTR 1 and 2026 QTR 2.
- (h) To calculate interest on backpay, the total backpay owed of \$999,596 was divided by 268 weeks in the backpay period, to arrive at an average weekly pay amount owed of \$3,729.84. This amount was entered into the BackpayTEC program for each week to calculate interest owed on backpay and to calculate the Excess Tax Liability owed.

2. As a result of the conduct described above in paragraphs 16 and 21 of the Consolidated Complaint, Respondents are required to pay benefit fund contributions based on the collective-bargaining agreement which expired on April 30, 2012, and the period after the expiration of the Agreement.

- (a) Respondents were required to make total Fund contributions totaling \$20.07 per hour worked by bargaining unit employees. The amount owed is broken down per Fund and is reflected in **ATTACHMENT B**.
- (b) Fund contributions for all unit employees were calculated based on the average hours of work per pay period during the backpay period multiplied by the fund rate:

(c) Respondents are additionally required to pay interest based on their delinquencies. The Fund's established practice has been to seek interest pursuant to 29 U.S.C. §1132(g)(2)(B) and as calculated pursuant to 26 U.S.C. §6621, and this practice comports with the Board's Order that interest calculations be made in accordance with *Merryweather Optical Co.*, 240 NLRB 1212, 1216 fn. 7 (1979).

3. The estimated total amount of Taxable Income for each year is based on the calculations for backpay in this Compliance Specification for each year of 2012, 2013, 2014, 2015, 2016 and 2017 and is summarized in ATTACHMENT A. Using this total estimated Taxable Income for the various years, federal and state taxes were estimated using the federal and state tax rates for the appropriate years. The federal rates are based on filing taxes as Single filing status.

(a) The estimated total amount of taxes owed for 2012, 2013, 2014, 2015, 2016 and 2017 would have been the amounts set forth in ATTACHMENT A. The estimated total of these amounts are \$172,304 for federal tax and \$33,510 for state tax.

(b) The total estimated amount of the lump sum award that is subject to this excess tax award is \$820,190 and is set forth in ATTACHMENT A. The lump sum amount is based on the backpay calculations described in this Specification. <sup>1</sup> The amount of taxes owed in 2017 is based on the current

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<sup>1</sup> Interest continues to accrue until the payment is made. The lump sum amount will need to be adjusted when backpay is paid to the discriminatees to include interest.

federal and state tax rates and on the assumption that discriminatees will be filing their taxes as Single.<sup>2</sup>

- (c) The estimated adverse tax consequences is the difference between the amount of taxes on the lump sum amount being paid in 2017 and the amount of taxes that would have been charged if these amounts were paid when the backpay was earned in 2012, 2013, 2014, 2015, 2016 and 2017.
- (d) The estimated excess tax liability payment that is to be made to discriminatees is also taxable income and causes additional tax liabilities. ATTACHMENT A also includes a calculation for these supplemental taxes. This amount is called the incremental tax liability. The incremental tax includes all of the taxes that the discriminatees will owe on the excess tax payment. This estimated incremental tax is calculated using the federal tax rate used for calculating taxes for the backpay award and the average state tax rate for 2017. This estimated amount is reflected in ATTACHMENT A.
- (e) The estimated Total Excess Taxes is the total tax consequences for discriminatees receiving a lump-sum award covering a backpay period longer than 1-year. The estimated Total Excess Taxes owed to discriminatees, which is determined by adding the Excess Taxes and Incremental Taxes, is reflected in ATTACHMENT A.

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<sup>2</sup> Although the backpay period continues to accrue to the present date, there is no excess tax liability for backpay that would have been earned in the year a lump sum award is made.

Summarizing the facts and figures above and denoted in ATTACHMENTS A and B, Respondents' obligation covered by this Compliance Specification, in accordance with the Board's Order, will be substantially discharged by payment of \$820,190 for wages, \$68,752 interest on backpay, \$656,690 for fund contributions, and \$184,969 of excess tax liability owed as a result of Respondents' unlawful conduct for the time period covered in this Specification and continues to accrue. Respondents additionally owe interest computed according to Board policy, as stated in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), less all tax withholdings as required by Federal, state, and municipal law.

**WHEREFORE**, it is requested that an Order be entered consistent with the above.

### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on the **October 25, 2017, at 9:30 a.m.** and consecutive days thereafter until concluded, at the National Labor Relations Board, Region 22 hearing room located at 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint and Compliance Specification, at which time you will have the right to appear in person, or otherwise, and give testimony. The procedures to be followed at the hearing are described in the attached form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached form NLRB-4338.

## ANSWER REQUIREMENT

Respondents are notified that, pursuant to Sections 102.20, 102.21, and 102.56 of the Board's Rules and Regulations, they must file an answer to the Consolidated Complaint and Compliance Specification.

Therefore, the Respondents shall, within 21 days from the date of this Consolidated Complaint, Compliance Specification and Notice of Hearing, file with the undersigned Regional Director, acting in this matter as an agent of the National Labor Relations Board, an original and four (4) copies of an answer to the Consolidated Complaint and Compliance Specification and shall immediately serve a copy thereof on each of the other parties. Unless filed electronically in a pdf form, Respondents should file an original copy of the answer to the Consolidated Complaint and Compliance Specification with this office and shall also serve a copy of the answer on each of the other parties. The answer must be **received by this office on or before August 21, 2017, or postmarked no later than August 20, 2017.**

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing**, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's

website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by the Respondents or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.21 and 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to this Consolidated Complaint, Compliance Specification and Notice of Hearing is not a pdf file containing the required signature, the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint and Compliance Specification are true.

As to all matters set forth in Compliance Specification paragraphs 1 to 3 that are within the knowledge of Respondents, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondents' knowledge, and set forth in detail Respondents' position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint and Compliance Specification are true. If the answer fails to deny allegations of the Compliance Specification paragraphs 1 to 3 in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the Compliance Specification are true and preclude Respondent from introducing any evidence controverting those allegations.

As to all matters set forth in the Compliance Specification that are within the knowledge of Respondents, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondents' knowledge, and set forth in detail Respondents' position as to the applicable premises and furnish the appropriate supporting figures.

Dated at Newark, New Jersey on the 31<sup>st</sup> day of July, 2017.



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David E. Leach III, Regional Director  
National Labor Relations Board  
Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A

Backpay period:

4/23/2012 to 6/17/2017

Interest  
calculated to:

6/17/2017

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2012	2	4/7						
2012	2	4/14						
2012	2	4/21						
2012	2	4/28	3,729.85					
2012	2	5/5	3,729.85					
2012	2	5/12	3,729.85					
2012	2	5/19	3,729.85					
2012	2	5/26	3,729.85					
2012	2	6/2	3,729.85					
2012	2	6/9	3,729.85					
2012	2	6/16	3,729.85					
2012	2	6/23	3,729.85					
2012	2	6/30	3,729.85					
2012	2	Total	37,299	28,049	9,249	-	-	9,249
2012	3	7/7	3,729.85					
2012	3	7/14	3,729.85					
2012	3	7/21	3,729.85					
2012	3	7/28	3,729.85					
2012	3	8/4	3,729.85					
2012	3	8/11	3,729.85					
2012	3	8/18	3,729.85					
2012	3	8/25	3,729.85					
2012	3	9/1	3,729.85					
2012	3	9/8	3,729.85					
2012	3	9/15	3,729.85					
2012	3	9/22	3,729.85					
2012	3	9/29	3,729.85					
2012	3	Total	48,488	28,049	20,439	-	-	20,439
2012	4	10/6	3,729.85					
2012	4	10/13	3,729.85					
2012	4	10/20	3,729.85					
2012	4	10/27	3,729.85					
2012	4	11/3	3,729.85					
2012	4	11/10	3,729.85					
2012	4	11/17	3,729.85					
2012	4	11/24	3,729.85					
2012	4	12/1	3,729.85					
2012	4	12/8	3,729.85					
2012	4	12/15	3,729.85					
2012	4	12/22	3,729.85					
2012	4	12/29	3,729.85					
2012	4	Total	48,488	28,049	20,439	-	-	20,439

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

<b>ATTACHMENT A</b>	<b>Backpay period:</b>	<b>Interest calculated to:</b>
	4/23/2012 to 6/17/2017	6/17/2017

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2013	1	1/5	3,729.85					
2013	1	1/12	3,729.85					
2013	1	1/19	3,729.85					
2013	1	1/26	3,729.85					
2013	1	2/2	3,729.85					
2013	1	2/9	3,729.85					
2013	1	2/16	3,729.85					
2013	1	2/23	3,729.85					
2013	1	3/2	3,729.85					
2013	1	3/9	3,729.85					
2013	1	3/16	3,729.85					
2013	1	3/23	3,729.85					
2013	1	3/30	3,729.85					
2013	1	Total	48,488	28,049	20,439	-	-	20,439
2013	2	4/6	3,729.85					
2013	2	4/13	3,729.85					
2013	2	4/20	3,729.85					
2013	2	4/27	3,729.85					
2013	2	5/4	3,729.85					
2013	2	5/11	3,729.85					
2013	2	5/18	3,729.85					
2013	2	5/25	3,729.85					
2013	2	6/1	3,729.85					
2013	2	6/8	3,729.85					
2013	2	6/15	3,729.85					
2013	2	6/22	3,729.85					
2013	2	6/29	3,729.85					
2013	2	Total	48,488	28,049	20,439	-	-	20,439
2013	3	7/6	3,729.85					
2013	3	7/13	3,729.85					
2013	3	7/20	3,729.85					
2013	3	7/27	3,729.85					
2013	3	8/3	3,729.85					
2013	3	8/10	3,729.85					
2013	3	8/17	3,729.85					
2013	3	8/24	3,729.85					
2013	3	8/31	3,729.85					
2013	3	9/7	3,729.85					
2013	3	9/14	3,729.85					
2013	3	9/21	3,729.85					
2013	3	9/28	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A

Backpay period:

4/23/2012 to 6/17/2017

Interest  
calculated to:

6/17/2017

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2013	3	Total	48,488		48,488	-	-	48,488
2013	4	10/5	3,729.85					
2013	4	10/12	3,729.85					
2013	4	10/19	3,729.85					
2013	4	10/26	3,729.85					
2013	4	11/2	3,729.85					
2013	4	11/9	3,729.85					
2013	4	11/16	3,729.85					
2013	4	11/23	3,729.85					
2013	4	11/30	3,729.85					
2013	4	12/7	3,729.85					
2013	4	12/14	3,729.85					
2013	4	12/21	3,729.85					
2013	4	12/28	3,729.85					
2013	4	Total	48,488		48,488	-	-	48,488
2014	1	1/4	3,729.85					
2014	1	1/11	3,729.85					
2014	1	1/18	3,729.85					
2014	1	1/25	3,729.85					
2014	1	2/1	3,729.85					
2014	1	2/8	3,729.85					
2014	1	2/15	3,729.85					
2014	1	2/22	3,729.85					
2014	1	3/1	3,729.85					
2014	1	3/8	3,729.85					
2014	1	3/15	3,729.85					
2014	1	3/22	3,729.85					
2014	1	3/29	3,729.85					
2014	1	Total	48,488		48,488	-	-	48,488
2014	2	4/5	3,729.85					
2014	2	4/12	3,729.85					
2014	2	4/19	3,729.85					
2014	2	4/26	3,729.85					
2014	2	5/3	3,729.85					
2014	2	5/10	3,729.85					
2014	2	5/17	3,729.85					
2014	2	5/24	3,729.85					
2014	2	5/31	3,729.85					
2014	2	6/7	3,729.85					
2014	2	6/14	3,729.85					
2014	2	6/21	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A

Backpay period:

4/23/2012 to 6/17/2017

Interest  
calculated to:

6/17/2017

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2014	2	6/28	3,729.85					
2014	2	Total	48,488		48,488	-	-	48,488
2014	3	7/5	3,729.85					
2014	3	7/12	3,729.85					
2014	3	7/19	3,729.85					
2014	3	7/26	3,729.85					
2014	3	8/2	3,729.85					
2014	3	8/9	3,729.85					
2014	3	8/16	3,729.85					
2014	3	8/23	3,729.85					
2014	3	8/30	3,729.85					
2014	3	9/6	3,729.85					
2014	3	9/13	3,729.85					
2014	3	9/20	3,729.85					
2014	3	9/27	3,729.85					
2014	3	Total	48,488		48,488	-	-	48,488
2014	4	10/4	3,729.85					
2014	4	10/11	3,729.85					
2014	4	10/18	3,729.85					
2014	4	10/25	3,729.85					
2014	4	11/1	3,729.85					
2014	4	11/8	3,729.85					
2014	4	11/15	3,729.85					
2014	4	11/22	3,729.85					
2014	4	11/29	3,729.85					
2014	4	12/6	3,729.85					
2014	4	12/13	3,729.85					
2014	4	12/20	3,729.85					
2014	4	12/27	3,729.85					
2014	4	Total	48,488		48,488	-	-	48,488
2015	1	1/3	3,729.85					
2015	1	1/10	3,729.85					
2015	1	1/17	3,729.85					
2015	1	1/24	3,729.85					
2015	1	1/31	3,729.85					
2015	1	2/7	3,729.85					
2015	1	2/14	3,729.85					
2015	1	2/21	3,729.85					
2015	1	2/28	3,729.85					
2015	1	3/7	3,729.85					
2015	1	3/14	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

Backpay period:

4/23/2012 to 6/17/2017

Interest  
calculated to:

6/17/2017

ATTACHMENT A

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2015	1	3/21	3,729.85					
2015	1	3/28	3,729.85					
2015	1	Total	48,488		48,488	-	-	48,488
2015	2	4/4	3,729.85					
2015	2	4/11	3,729.85					
2015	2	4/18	3,729.85					
2015	2	4/25	3,729.85					
2015	2	5/2	3,729.85					
2015	2	5/9	3,729.85					
2015	2	5/16	3,729.85					
2015	2	5/23	3,729.85					
2015	2	5/30	3,729.85					
2015	2	6/6	3,729.85					
2015	2	6/13	3,729.85					
2015	2	6/20	3,729.85					
2015	2	6/27	3,729.85					
2015	2	Total	48,488		48,488	-	-	48,488
2015	3	7/4	3,729.85					
2015	3	7/11	3,729.85					
2015	3	7/18	3,729.85					
2015	3	7/25	3,729.85					
2015	3	8/1	3,729.85					
2015	3	8/8	3,729.85					
2015	3	8/15	3,729.85					
2015	3	8/22	3,729.85					
2015	3	8/29	3,729.85					
2015	3	9/5	3,729.85					
2015	3	9/12	3,729.85					
2015	3	9/19	3,729.85					
2015	3	9/26	3,729.85					
2015	3	Total	48,488		48,488	-	-	48,488
2015	4	10/3	3,729.85					
2015	4	10/10	3,729.85					
2015	4	10/17	3,729.85					
2015	4	10/24	3,729.85					
2015	4	10/31	3,729.85					
2015	4	11/7	3,729.85					
2015	4	11/14	3,729.85					
2015	4	11/21	3,729.85					
2015	4	11/28	3,729.85					
2015	4	12/5	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A				Backpay period: 4/23/2012 to 6/17/2017		Interest calculated to: 6/17/2017			
Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2015	4	12/12	3,729.85						
2015	4	12/19	3,729.85						
2015	4	12/26	3,729.85						
2015	4	Total	48,488		48,488	-	-		48,488
2016	1	1/2	3,729.85						
2016	1	1/9	3,729.85						
2016	1	1/16	3,729.85						
2016	1	1/23	3,729.85						
2016	1	1/30	3,729.85						
2016	1	2/6	3,729.85						
2016	1	2/13	3,729.85						
2016	1	2/20	3,729.85						
2016	1	2/27	3,729.85						
2016	1	3/5	3,729.85						
2016	1	3/12	3,729.85						
2016	1	3/19	3,729.85						
2016	1	3/26	3,729.85						
2016	1	Total	48,488	21,447	27,041	-	-		27,041
2016	2	4/2	3,729.85						
2016	2	4/9	3,729.85						
2016	2	4/16	3,729.85						
2016	2	4/23	3,729.85						
2016	2	4/30	3,729.85						
2016	2	5/7	3,729.85						
2016	2	5/14	3,729.85						
2016	2	5/21	3,729.85						
2016	2	5/28	3,729.85						
2016	2	6/4	3,729.85						
2016	2	6/11	3,729.85						
2016	2	6/18	3,729.85						
2016	2	6/25	3,729.85						
2016	2	Total	48,488	21,447	27,041	-	-		27,041
2016	3	7/2	3,729.85						
2016	3	7/9	3,729.85						
2016	3	7/16	3,729.85						
2016	3	7/23	3,729.85						
2016	3	7/30	3,729.85						
2016	3	8/6	3,729.85						
2016	3	8/13	3,729.85						
2016	3	8/20	3,729.85						
2016	3	8/27	3,729.85						

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A				Backpay period: 4/23/2012 to 6/17/2017		Interest calculated to: 6/17/2017		
Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2016	3	9/3	3,729.85					
2016	3	9/10	3,729.85					
2016	3	9/17	3,729.85					
2016	3	9/24	3,729.85					
2016	3	Total	48,488		48,488	-	-	48,488
2016	4	10/1	3,729.85					
2016	4	10/8	3,729.85					
2016	4	10/15	3,729.85					
2016	4	10/22	3,729.85					
2016	4	10/29	3,729.85					
2016	4	11/5	3,729.85					
2016	4	11/12	3,729.85					
2016	4	11/19	3,729.85					
2016	4	11/26	3,729.85					
2016	4	12/3	3,729.85					
2016	4	12/10	3,729.85					
2016	4	12/17	3,729.85					
2016	4	12/24	3,729.85					
2016	4	12/31	3,729.85					
2016	4	Total	52,218		52,218	-	-	52,218
2017	1	1/7	3,729.85					
2017	1	1/14	3,729.85					
2017	1	1/21	3,729.85					
2017	1	1/28	3,729.85					
2017	1	2/4	3,729.85					
2017	1	2/11	3,729.85					
2017	1	2/18	3,729.85					
2017	1	2/25	3,729.85					
2017	1	3/4	3,729.85					
2017	1	3/11	3,729.85					
2017	1	3/18	3,729.85					
2017	1	3/25	3,729.85					
2017	1	4/1	3,729.85					
2017	1	Total	48,488		48,488	-	-	48,488
2017	2	4/8	3,729.85					
2017	2	4/15	3,729.85					
2017	2	4/22	3,729.85					
2017	2	4/29	3,729.85					
2017	2	5/6	3,729.85					
2017	2	5/13	3,729.85					
2017	2	5/20	3,729.85					

Case Name: ECI/Kielczewski Corp/BE Construction

<b>ATTACHMENT A</b>				<b>Backpay period:</b> 4/23/2012 to 6/17/2017		<b>Interest calculated to:</b> 6/17/2017		
Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2017	2	5/27	3,729.85					
2017	2	6/3	3,729.85					
2017	2	6/10	3,729.85					
2017	2	6/17	3,729.85					
2017	2	6/24						
2017	2	7/1						
2017	2	Total	41,028		41,028	-	-	41,028

<b>Totals</b>	<b>820,190</b>	<b>-</b>	<b>-</b>	<b>820,190</b>
<b>Net Backpay (Withholdings)</b>				<b>820,190</b>
<b>Expenses (No Withholdings)</b>				<b>-</b>
<b>Daily Compound Interest (No Withholdings)</b>				<b>68,752</b>
<b>Total Backpay, Expenses and Interest</b>				<b>888,941</b>

Notes

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NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A		Backpay period: 4/23/2012 to 6/17/2017		Interest calculated to: 6/17/2017			
Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses

Adjusted Taxes for Lump Sum Backpay

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A

Year	Taxable Income (Backpay)	Filing Status	State	Federal Tax	State Tax
2008	0	Single Filer	AZ	0	0
2009	0	Single Filer	AZ	0	0
2010	0	Single Filer	AZ	0	0
2011	0	Single Filer	AZ	0	0
2012	50,127	Single Filer	NJ	8,562	2,301
2013	137,854	Single Filer	NJ	31,892	6,322
2014	193,952	Single Filer	NJ	47,862	8,894
2015	193,952	Single Filer	NJ	47,610	8,894
2016	154,788	Single Filer	NJ	36,377	7,098
<b>Taxes Paid:</b>				172,304	33,510
<b>Sum</b>					
'00 to '16	730,673	Single Filer	NJ	245,165	33,507

2017	89,516				
		Excess Tax on Backpay:	72,861	0	
		Incremental Tax on Backpay:	57,681		
		<b>Total Excess Tax on Backpay:</b>	<b>130,541</b>		

<b>Interest on Backpay:</b>	68,752				
		Tax on Interest:	27,226	3,153	
		Incremental Tax on Interest:	24,049		
		<b>Total Excess Tax on Interest:</b>	<b>54,428</b>		

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A	Backpay period:	Interest calculated to:
	4/23/2012 to 6/17/2017	6/17/2017

Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
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Additional Tax Liability: 0  
 Total Excess Tax Liability: 184,969

**ENVIRONMENTAL CONTRACTORS, INC AND  
KIELCZEWSKI CORPORATION AND  
BE CONSTRUCTION CORP, ALTER EGOS AND  
A SINGLE EMPLOYER  
Cases 22-CA-089865, 22-CA-136700, 22-CA-145173, 22-CA-172957**

**APPENDIX B**

<b>FUNDS</b>	<b>Hourly Rate</b>	<b>Hours Owed</b>	<b>Amount Owed</b>
Welfare	\$8.85	32,720	\$289,572
Pension	\$5.15	32,720	\$168,508
Annuity	\$4.45	32,720	\$145,604
Training	\$0.92	32,720	\$30,102
LECET	\$0.25	32,720	\$8,180
Health & Safety	\$0.05	32,720	\$1,636
LEROF	\$0.40	32,720	\$13088

**\$656,690 TOTAL FUNDS OWED THROUGH 6/17/2017**

**EXHIBIT 5**

**EXHIBIT 5**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

ENVIRONMENTAL CONTRACTORS,  
KIELCZEWSKI CORPORATION & THEIR  
ALTO EGO, SINGLE EMPLOYER AND/OR  
SUCCESSOR, BE CONSTRUCTION  
CORPORATION

and

LOCAL 78 LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA

Case 22-CA-136700; 22-CA-  
089865; 22-CA-145173; 22-  
CA-172957

**AFFIDAVIT OF SERVICE OF: Order Consolidating Complaint, Compliance  
Specification and Notice of Hearing**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **July 31, 2017**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

**CERTIFIED MAIL**

WALDO H. CARKHUFF, ESQ.  
CARKHUFF & RADMIN, ESQS.  
598 - 600 SOMERSET ST  
NORTH PLAINFIELD, NJ 07060-4943

RAYMOND G. HEINEMAN, ESQ.  
KROLL, HEINEMAN, CARTON LLC  
METRO CORPORATE CAMPUS I  
99 WOOD AVENUE SOUTH, SUITE 307  
ISELIN, NJ 08830-2715

**REGULAR MAIL**

SLAWOMIR KIELCZEWSKI  
ENVIRONMENTAL CONTRACTORS,  
KIELCZEWSKI CORPORATION AND BE  
CONSTRUCTION CORP.  
235 WATCHUNG AVE  
WEST ORANGE, NJ 07052-5520

LOCAL 78 LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA  
30 CLIFF ST FL 6  
NEW YORK, NY 10038-2825

July 31, 2017

Date

Enter NAME, Designated Agent of NLRB

Name

*Maurice J. Hoche*

Signature

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
*Waldo H Carshuff, Esq*  
*Carshuff*  
*598 - 600 Somerset St*  
*North Plainfield, NJ*  
*07060*

2. Article Number (Transfer from service label)  
 7016 2140 0001 1336 1341

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *[Signature]*  Agent  
 Addressee

B. Received by (Printed Name)  
*KADW...*

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Adult Signature  Priority Mail Express®  
 Adult Signature Restricted Delivery  Registered Mail™  
 Certified Mail®  Registered Mail Restricted Delivery  
 Certified Mail Restricted Delivery  Return Receipt for Merchandise  
 Collect on Delivery Restricted Delivery  Signature Confirmation™  
 Insured Mail  Signature Confirmation Restricted Delivery  
 Insured Mail Restricted Delivery (over \$500)

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
*Raymond, Heironima Carter Hill*  
*Hill, Heironima, Cruz*  
*Metro Corporate Campus F*  
*99 Broad Avenue South*  
*Suite 307*  
*Iselin, N.J. 08830-2715*

2. Article Number (Transfer from service label)  
 7016 2140 0001 1336 1280

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 X *[Signature]*  Agent  
 Addressee

B. Received by (Printed Name)  
*Kate Reynolds*

C. Date of Delivery  
*8/1/17*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Adult Signature  Priority Mail Express®  
 Adult Signature Restricted Delivery  Registered Mail™  
 Certified Mail®  Registered Mail Restricted Delivery  
 Certified Mail Restricted Delivery  Return Receipt for Merchandise  
 Collect on Delivery Restricted Delivery  Signature Confirmation™  
 Insured Mail  Signature Confirmation Restricted Delivery  
 Insured Mail Restricted Delivery (over \$500)

PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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 Adult Signature Restricted Delivery \$

Postage \$  
 Total Postage and Fees \$

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Sent To *Waldo H Carshuff*  
 Street and Apt. No. or PO Box No. *598-600 Somerset St*  
 City, State, ZIP+4® *North Plainfield, NJ 07060*

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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 Return Receipt (hardcopy) \$  
 Return Receipt (electronic) \$  
 Certified Mail Restricted Delivery \$  
 Adult Signature Required \$  
 Adult Signature Restricted Delivery \$

Postage \$  
 Total Postage and Fees \$

Postmark Here

Sent To *Raymond, Heironima Carter Hill*  
 Street and Apt. No. or PO Box No. *99 Broad Avenue South Suite 307*  
 City, State, ZIP+4® *Iselin NJ 08830-2715*

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



7016 2140 0001 1336 1341

7016 2140 0001 1336 1280

# **EXHIBIT 6**

# **EXHIBIT 6**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation

Cases: 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

and

Local 78, Laborers International Union of  
North America

---

**ANSWER TO ORDER CONSOLIDATING COMPLAINT, COMPLIANCE  
SPECIFICATION AND NOTICE OF HEARING**

BE Construction Corporation ("BE"), by and through its attorneys  
Carkhuff & Radmin, P.C. as and for its Answer to Order Consolidating Complaint  
brought by Local 78, Laborers International Union of North America says as  
follows:

1. (a) Respondent BE is without sufficient information to form an  
Answer to Paragraph 1(a) of the Order Consolidating Complaint, Compliance  
Specification and leave Local 78 and Laborers International Union to its proofs.

(b) Respondent BE is without sufficient information to form an  
Answer to Paragraph 1(b) of the Order Consolidating Complaint, Compliance  
Specification and leave Local 78 and Laborers International Union to its proofs.

(c) Respondent BE is without sufficient information to form an  
Answer to Paragraph 1(c) of the Order Consolidating Complaint, Compliance  
Specification and leave Local 78 and Laborers International Union to its proofs.

2. Respondent BE admits to having an office and place of business in  
West Orange, New Jersey, and have been contractors in the construction industry.

BE does not occupy the same space at the West Orange premises as do Respondents, ECI and Kielczewski Corp.

3. Respondent BE denies the allegations set forth in Paragraph 3 of the Order Consolidating Complaint, Compliance Specification.

4. Respondent BE denies the allegations set forth in Paragraph 4 of the Order Consolidating Complaint, Compliance Specification.

5. Respondent BE denies the allegations set forth in Paragraph 5 of the Order Consolidating Complaint, Compliance Specification.

6. Respondent BE denies the allegations set forth in Paragraph 6 of the Order Consolidating Complaint, Compliance Specification.

7. Respondent BE denies the allegations set forth in Paragraph 7 of the Order Consolidating Complaint, Compliance Specification.

8. Respondent BE denies the allegations set forth in Paragraph 8 of the Order Consolidating Complaint, Compliance Specification.

9. Respondent BE is without sufficient information to form an Answer to Paragraph 9 (insofar as it has no knowledge of the value of the services of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

10. Respondent BE is without sufficient information to form an Answer to Paragraph 10 (insofar as BE is unaware of those employees of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

11. Respondent BE is without sufficient information to form an Answer to Paragraph 11 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

12. Respondent BE is without sufficient information to form an Answer to Paragraph 12 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

13. Respondent BE is without sufficient information to form an Answer to Paragraph 13 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

14. Respondent BE is without sufficient information to form an Answer to Paragraph 14 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

15. Respondent BE is without sufficient information to form an Answer to Paragraph 15 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

16. Respondent BE is without sufficient information to form an Answer to Paragraph 16 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

17. Respondent BE is without sufficient information to form an Answer to Paragraph 17 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

18. Respondent BE is without sufficient information to form an Answer to Paragraph 18 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

19. Respondent BE is without sufficient information to form an Answer to Paragraph 19 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 19.

20. Respondent BE is without sufficient information to form an Answer to Paragraph 20 of the Order Consolidating Complaint, Compliance

Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 20.

21. Respondent BE is without sufficient information to form an Answer to Paragraph 21 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 21.

22. Respondent BE is without sufficient information to form an Answer to Paragraph 22 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 22.

23. Respondent BE is without sufficient information to form an Answer to Paragraph 23 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

24. Respondent BE is without sufficient information to form an Answer to Paragraph 24 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

25. Respondent BE denies the allegations set forth in Paragraph 25 of the Order Consolidating Complaint, Compliance Specification.

26. Respondent BE denies the allegations set forth in Paragraph 26 of the Order Consolidating Complaint, Compliance Specification.

27. Respondent BE denies the allegations set forth in Paragraph 27 of the Order Consolidating Complaint, Compliance Specification.

28. Respondent BE denies the allegations set forth in Paragraph 28 of the Order Consolidating Complaint, Compliance Specification.

29. Respondent BE denies the allegations set forth in Paragraph 29 of the Order Consolidating Complaint, Compliance Specification.

REMEDY

Insofar as BE has at no time had either a legal or equitable relationship with Respondents ECI and Kielczewski Corp., this matter should be dismissed forthwith.

COMPLIANCE SPECIFICATION

1. BE alleges it is not subject to the National Labor Relations Act, 29 U.S.C. § 151 set seq. ("the Act") and the Rules and Regulations promulgated thereunder, nor sections 102.33 and 102.54(b) thereof and is not a successor corporation of entity to Environmental Contractors, Inc. and Kielczewski Corp. As such the Compliance Specification allegations are inapplicable to BE.

2. BE is a duly organized and operating New Jersey Corporation, having been qualified as a Women's Minority Business under NJSA 17A:46.

3. Barbara Reed is the President and sole shareholder of BE and, having read the Complaint, Answers and compliance specifications set forth herein, certifies that said responses by BE Corporation are accurate and truthful to the best of her knowledge and understanding.

Date:

Aug 8, 2017

Barbara Reed, President

Barbara Reed, President

Carkhuff & Radmin, P.C.

Attorneys for BE Construction Corp.

Date:

8/14/17

Walter H. Carkhuff

Walter H. Carkhuff  
NJ Bar 268861971-NJ

RECEIVED  
NLRB-REGION 22  
NEWARK, NJ

2017 AUG 16 PM 8:52

# **EXHIBIT 7**

# **EXHIBIT 7**



United States Government

**NATIONAL LABOR RELATIONS BOARD**

Region 22

20 Washington Place - 5th Floor

Newark, NJ 07102

December 1, 2017

Via Electronic and U.S. Mail

Waldo H. Carkhuff, Esq.  
Carkhuff & Radmin, PC  
598-600 Somerset Street  
North Plainfield, NJ 07060

Re: Environmental Contractors, Inc.,  
Kielczewski Corp., and their alter ego, single  
employer and/or successor, BE  
Construction Corp.  
Cases 22-CA-089865, et al.

Dear Mr. Carkhuff:

Thank you for sending a draft of an Amended Answer to the Order Consolidating Complaint, Compliance Specification and Notice of Hearing in this matter. The amendments you propose to Answer the Complaint allegations address the issues which we discussed. Thank for limiting the issues to be litigated to those that are actually in contention.

With respect to your Answer to the Compliance Specification, please be advised that your Answer is defective pursuant to Section 102.56(b) of the NLRB's Rules and Regulations. In that regard, Section 102.56(b), "*Contents of answer to specification*" provides that: "The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures."

In your Answer to the Compliance Specification you failed to respond with specificity to the allegations in the Specification, including those concerning the back pay

and other amounts currently owing and the premises on which these amounts are based. Moreover, you failed to provide alternative calculations. Thus in your Answer of August 8, 2017 you failed to address the allegations in the Compliance Specification but only generally stated that BE "is not subject to the National Labor Relations Act, 29 U.S.C. Section 151 et seq. ('the Act') and the Rules and Regulations promulgated thereunder, nor sections 102.33 and 102.54(b) thereof and is not a successor corporation of entity to Environmental Contractors, Inc. and Kielczewski Corp. As such the Compliance Specification allegations are inapplicable to BE." Additionally, you stated that "BE is a duly organized and operating New Jersey Corporation, having been qualified as a Women's Minority business under NJSA 17A:46." The Answer thus fails to respond with specificity to the Specification allegations and provides no supporting figures.

Additionally, in your proposed Amended Answer you indicated that, in the event your client is found to be subject to the allegations of the Compliance Specification, the Specification computations are "inaccurate and erroneously based insofar as the same are inconsistent with the assumptions (payroll), made and set forth therein, to wit; (a) the commence date is incorrect; (b) back pay, both the period for and projections are inaccurate; (c) BE has not seen nor received records provided by Kielczewski Corp. or ECI, (d) BE is not a successor corporation or entity to Environmental Contractors, Inc. and Kielczewski Corp."

Your proposed Amended Answer to the Specification is also deficient. In this regard, you do not specify how the Specification computations are erroneous or inaccurate or inconsistent with the assumptions made. Nor do you outline how the commence date is inaccurate nor do you provide an alternative date. Additionally, you do not specify how the period for and projections of backpay are inaccurate, nor do you provide specific alternatives. Neither do you posit an alternative to basing the computations on records provided by Kielczewski Corp. or ECI. Again, you provide no figures to support your general denial.

Section 102.56(c) of the NLRB's Rules and Regulations, "*Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*" states in relevant part, "...If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation."

Please be advised that if you fail to file an amended Answer that comports with the requirements of Section 102.56(b) of the Rules and Regulations by the close of business on **December 15, 2017**, the Region will file a motion asking that the allegations not properly answered be deemed admitted without evidence and that you and the above-referenced employers be precluded from offering evidence to controvert them.

Thank you for your kind attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Dice-Goldberg', written in a cursive style.

Bert Dice-Goldberg  
Counsel for the General Counsel

**EXHIBIT 8**

**EXHIBIT 8**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

*D. Hochberg*

ENVIRONMENTAL CONTRACTORS, INC.,  
KIELCZEWSKI CORPORATION AND THEIR  
ALTER EGO, SINGLE EMPLOYER AND/OR  
SUCCESSOR, BE CONSTRUCTION CORPORATION

and

LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA

Cases 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter is rescheduled from October 25, 2017 to **January 9, 2018 at 9:30 a.m.** at 20 WASHINGTON PLACE, 5TH FLOOR, NEWARK, NJ 07102-3110. The hearing will continue on consecutive days until concluded.

Dated: October 19, 2017

*David E. Leach III*

---

DAVID E. LEACH III  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 22  
20 WASHINGTON PL  
FL 5  
NEWARK, NJ 07102-3127

**EXHIBIT 9**

**EXHIBIT 9**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation

Cases: 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

and

Local 78, Laborers International Union of  
North America

---

**AMENDED ANSWER TO ORDER CONSOLIDATING COMPLAINT,  
COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

BE Construction Corporation ("BE"), by and through its attorneys  
Carkhuff & Radmin, P.C. as and for its Amended Answer to Order Consolidating  
Complaint brought by Local 78, Laborers International Union of North America  
says as follows:

1. (a) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(a) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

(b) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(b) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

(c) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(c) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

2. Respondent BE admits to having an office and place of business in West Orange, New Jersey, and have been contractors in the construction industry. BE does not occupy the same space at the West Orange premises as do Respondents, ECI and Kielczewski Corp.

3. Respondent BE denies the allegations set forth in Paragraph 3 of the Order Consolidating Complaint, Compliance Specification.

4. Respondent BE denies the allegations set forth in Paragraph 4 of the Order Consolidating Complaint, Compliance Specification.

5. Respondent BE denies the allegations set forth in Paragraph 5 of the Order Consolidating Complaint, Compliance Specification.

6. Respondent BE denies the allegations set forth in Paragraph 6 of the Order Consolidating Complaint, Compliance Specification.

7. Respondent BE denies the allegations set forth in Paragraph 7 of the Order Consolidating Complaint, Compliance Specification.

8. Respondent BE denies the allegations set forth in Paragraph 8 of the Order Consolidating Complaint, Compliance Specification.

9. Respondent BE is without sufficient information to form an Answer to Paragraph 9 (insofar as it has no knowledge of the value of the services of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

10. Respondent BE is without sufficient information to form an Answer to Paragraph 10 (insofar as BE is unaware of those employees of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

11. Respondent BE admits the allegations set forth in Paragraph 11 of the Order Consolidating Complaint, Compliance Specification.

12. Respondent BE admits that Section 9(b) of the Act is as stated in the Complaint. Respondent BE denies that Section 9(b) is applicable to it.

13. Respondent BE admits the allegations set forth in Paragraph 13 of the Order Consolidating Complaint, Compliance Specification.

14. Respondent BE is without sufficient information to form an Answer to Paragraph 14 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

15. Respondent BE admits only that on January 13, 2014 Administrative Law Judge Steven Davis, ("ALJ"), issued his Decision and Order in Case 22-CA-08965.

16. Respondent BE repeats its Answer in Paragraph 15.

17. Respondent BE admits the allegations set forth in Paragraph 17 of the Order Consolidating Complaint, Compliance Specification.

18. Respondent BE admits the allegations set forth in Paragraph 18 of the Order Consolidating Complaint, Compliance Specification.

19. Respondent BE is without sufficient information to form an Answer to Paragraph 19 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 19.

20. Respondent BE is without sufficient information to form an Answer to Paragraph 20 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 20.

21. Respondent BE is without sufficient information to form an Answer to Paragraph 21 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs

with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 21.

22. Respondent BE is without sufficient information to form an Answer to Paragraph 22 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 22.

23. Respondent BE is without sufficient information to form an Answer to Paragraph 23 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

24. Respondent BE is without sufficient information to form an Answer to Paragraph 24 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

25. Respondent BE denies the allegations set forth in Paragraph 25 of the Order Consolidating Complaint, Compliance Specification.

26. Respondent BE denies the allegations set forth in Paragraph 26 of the Order Consolidating Complaint, Compliance Specification.

27. Respondent BE denies the allegations set forth in Paragraph 27 of the Order Consolidating Complaint, Compliance Specification.

28. Respondent BE denies the allegations set forth in Paragraph 28 of the Order Consolidating Complaint, Compliance Specification.

29. Respondent BE denies the allegations set forth in Paragraph 29 of the Order Consolidating Complaint, Compliance Specification.

#### REMEDY

Insofar as BE has at no time had either a legal or equitable relationship with Respondents ECI and Kielczewski Corp., this matter should be dismissed forthwith.

**EXHIBIT 10**

**EXHIBIT 10**



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation

Cases: 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

and

Local 78, Laborers International Union of  
North America

---

**SECOND AMENDED ANSWER TO ORDER CONSOLIDATING  
COMPLAINT, COMPLIANCE SPECIFICATION AND NOTICE OF  
HEARING**

BE Construction Corporation (“BE”), by and through its attorneys  
Carkhuff & Radmin, P.C. as and for its Second Amended Answer to Order  
Consolidating Complaint brought by Local 78, Laborers International Union of  
North America says as follows:

1. (a) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(a) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

(b) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(b) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

(c) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(c) of

the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

2. Respondent BE admits to having an office and place of business in West Orange, New Jersey, and have been contractors in the construction industry. BE does not occupy the same space at the West Orange premises as do Respondents, ECI and Kielczewski Corp.

3. Respondent BE denies the allegations set forth in Paragraph 3 of the Order Consolidating Complaint, Compliance Specification.

4. Respondent BE denies the allegations set forth in Paragraph 4 of the Order Consolidating Complaint, Compliance Specification.

5. Respondent BE denies the allegations set forth in Paragraph 5 of the Order Consolidating Complaint, Compliance Specification.

6. Respondent BE denies the allegations set forth in Paragraph 6 of the Order Consolidating Complaint, Compliance Specification.

7. Respondent BE denies the allegations set forth in Paragraph 7 of the Order Consolidating Complaint, Compliance Specification.

8. Respondent BE denies the allegations set forth in Paragraph 8 of the Order Consolidating Complaint, Compliance Specification.

9. Respondent BE is without sufficient information to form an Answer to Paragraph 9 (insofar as it has no knowledge of the value of the services of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

10. Respondent BE is without sufficient information to form an Answer to Paragraph 10 (insofar as BE is unaware of those employees of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

11. Respondent BE admits the allegations set forth in Paragraph 11 of the Order Consolidating Complaint, Compliance Specification.

12. Respondent BE admits that Section 9(b) of the Act is as stated in the Complaint. Respondent BE denies that Section 9(b) is applicable to it.

13. Respondent BE admits the allegations set forth in Paragraph 13 of the Order Consolidating Complaint, Compliance Specification.

14. Respondent BE is without sufficient information to form an Answer to Paragraph 14 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

15. Respondent BE admits only that on January 13, 2014 Administrative Law Judge Steven Davis, ("ALJ"), issued his Decision and Order in Case 22-CA-08965.

16. Respondent BE repeats its Answer in Paragraph 15.

17. Respondent BE admits the allegations set forth in Paragraph 17 of the Order Consolidating Complaint, Compliance Specification.

18. Respondent BE admits the allegations set forth in Paragraph 18 of the Order Consolidating Complaint, Compliance Specification.

19. Respondent BE is without sufficient information to form an Answer to Paragraph 19 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 19.

20. Respondent BE is without sufficient information to form an Answer to Paragraph 20 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 20.

21. Respondent BE is without sufficient information to form an Answer to Paragraph 21 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 21.

22. Respondent BE is without sufficient information to form an Answer to Paragraph 22 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 22.

23. Respondent BE is without sufficient information to form an Answer to Paragraph 23 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

24. Respondent BE is without sufficient information to form an Answer to Paragraph 24 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

25. Respondent BE denies the allegations set forth in Paragraph 25 of the Order Consolidating Complaint, Compliance Specification.

26. Respondent BE denies the allegations set forth in Paragraph 26 of the Order Consolidating Complaint, Compliance Specification.

27. Respondent BE denies the allegations set forth in Paragraph 27 of the Order Consolidating Complaint, Compliance Specification.

28. Respondent BE denies the allegations set forth in Paragraph 28 of the Order Consolidating Complaint, Compliance Specification.

29. Respondent BE denies the allegations set forth in Paragraph 29 of the Order Consolidating Complaint, Compliance Specification.

## REMEDY

Insofar as BE has at no time had either a legal or equitable relationship with Respondents ECI and Kielczewski Corp., this matter should be dismissed forthwith.

## COMPLIANCE SPECIFICATION

1. BE alleges it is not subject to the National Labor Relations Act, 29 U.S.C. § 151 set seq. (“the Act”) and the Rules and Regulations promulgated thereunder, nor sections 102.33 and 102.54(b) thereof and is not a successor corporation or entity to Environmental Contractors, Inc. and/or Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or Kielczewski Corp., it does not have now nor did it ever have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premise(s) upon which plaintiff bases the same. BE states that it was incorporated in the State of New Jersey on December 13, 2013, and, as such, any computation based upon an inception/commencement date must be so restructured therein. Furthermore, these computations are based upon estimates despite the fact that Respondent has provided exact payroll records of BE post December 13, 2013.

2. In the event BE is, however, is found to be subject to such Compliance Specifications, then computations made in said Complaint are inaccurate and/or erroneously based insofar as these disregard the correct date of inception/commencement and, accordingly, are inconsistent with the assumptions made and set forth therein, to wit; (a) the commence date need be re-established; then reapplied; (b) back pay, both the period for and projections are accordingly, inaccurate; (c) BE has not seen nor received records provided by Kielczewski Corp. or ECI; (d) BE is **not** a successor corporation or entity to Environmental Contractors, Inc. and/or Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or

Kielczewski Corp., it does not have now nor did it have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premises upon which plaintiff basis the same. BE states that it was incorporated in the State of New Jersey, on December 13, 2013, and, as such, any computation based upon an inception commencement date is so restructured therein. Furthermore, these computations are based upon estimates despite the fact that Respondent has provided exact payroll records of BE post December 13, 2013.

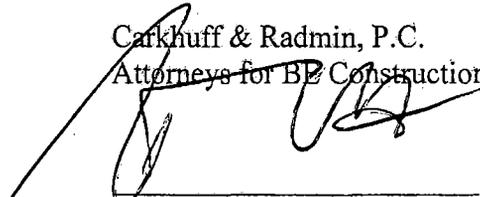
3. BE is a duly organized and operating New Jersey Corporation, having been qualified as a Women's Minority Business under NJSA 17A:46, such substantiating its claim that it is not a successor corporation of entity to Environmental Contractors, Inc. and Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or Kielczewski Corp., it does not have now nor did it ever have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premises upon which plaintiff bases the same. BE states that it was incorporated in the State of New Jersey on December 13, 2013, and, as such any computation based upon an inception/commencement date must be restructured therein. Furthermore, these computations are based upon estimates despite the fact that Respondent has provided exact payroll records of BE post December 13, 2013.

4. Barbara Reed is the President and sole shareholder of BE and, having read the Complaint, Answers and compliance specifications set forth herein, **certifies that said responses by BE Corporation are accurate and truthful to the best of her knowledge and understanding.**

Date: 12/29/17

  
Barbara Reed, President

Date: 12/29/17

  
Carkhuff & Radmin, P.C.  
Attorneys for BE Construction Corp.  
\_\_\_\_\_  
Waldo H. Carkhuff  
NJ Bar 268861971-NJ

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**EXHIBIT 11**

**EXHIBIT 11**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

**ENVIRONMENTAL CONTRACTORS, INC.,  
KIELCZEWSKI CORPORATION AND THEIR  
ALTER EGO, SINGLE EMPLOYER AND/OR  
SUCCESSOR, BE CONSTRUCTION CORPORATION**

**and**

**Cases 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957**

**LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA**

GENERAL COUNSEL'S MOTION TO STRIKE  
PORTIONS OF RESPONDENT'S ANSWER

Counsel for the General Counsel respectfully requests the Administrative Law Judge enter an Order striking portions of the Second Amended Answer to the Order Consolidating Complaint, Compliance Specification and Notice of Hearing filed by BE Construction Corp., herein "Respondent BE," on December 29, 2017 in the above-captioned matter, under the National Labor Relations Board's Rules and Regulations, herein "the Board's Rules," Section 102.24 and 102.56, on the basis that those portions of the Second Amended Answer are deficient, as they do not meet the specificity requirements of the Board's Rules, and on the basis of the following:

1. On July 31, 2017, the Regional Director for Region 22 of the National Labor Relations Board, herein “the Region,” duly served Respondent BE with an Order Consolidating Complaint, Compliance Specification and Notice of Hearing in Cases 22-CA-089865, *et al.*, herein the Complaint and Specification, (Attached hereto as Exhibit 1), in which, at page 7 *et seq.*, in the Compliance Specification section, herein “the Specification,” the Region set forth the alleged backpay, benefit fund contributions and tax liabilities due under the Board’s Order in Case 22-CA-089865, which was enforced by the U.S. Court of Appeals for the Third Circuit. *Environmental Contractors, Inc., and Kielczewski Corp., alter egos and a single employer*, Case No. 22-CA-089865 (Jan. 20, 2014), *aff’d* (Feb. 27, 2014), *enf’d* as *NLRB v. Environmental Contractors, Inc. and Kielczewski Corp., alter egos and a single employer*, No. 14-2815 (3d Cir., July 3, 2014) (unpublished)(ALJD, Board Order and Third Circuit Decision attached hereto as Exhibit 2).

2. On August 14, 2017, Respondent filed its original Answer to the Complaint and Specification (Attached hereto as Exhibit 3). After telephone conversations between Counsel for the General Counsel and Counsel for Respondent BE, and after Counsel for Respondent BE sent two draft Amended Answers, Counsel for the General Counsel informed Counsel for Respondent BE, by letter dated December 1, 2017, that unless Respondent BE cured the deficiencies in its Answer, that the General Counsel would file this Motion (Letter of December 1, 2017 attached hereto as Exhibit 4)..

3. Respondent BE filed its Amended Answer on December 28, 2017 (Attached hereto as Exhibit 5).

4. Respondent BE filed its Second Amended Answer on December 29, 2017 (Attached hereto as Exhibit 6).

5. As discussed in the General Counsel's letter of December 1, 2017, Respondent BE's Second Amended Answer is still deficient under the Board's Rules, and the following portions of Respondent BE's Answer should be stricken:

a. Respondent BE contends at paragraph 1 of the Compliance section of its Second Amended Answer that "it does not have now nor did it ever have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing."<sup>1</sup> Respondent BE further asserts that it is therefore "unable to identify and/or apply with sufficient specificity the computational premise(s) upon which plaintiff bases the same."

b. Section 102.56(b) of the Board's Rules and Regulations states that "The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial." The rule goes on to state that "As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically

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<sup>1</sup> Respondent BE also asserts it is not subject to the Act and not a successor to the two other Respondent's. These issues are appropriately dealt with in the Complaint allegations and Respondent's Amended Answer thereto, not in its Answer to the Compliance Specification.

state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures."

c. For Respondent to assert that it is without knowledge sufficient to either affirm or deny the allegations in the Specification is disingenuous at best. Counsel for Respondent BE has, for five years, also been Counsel for Respondent Environmental Contractors, Inc., herein "Respondent ECI," and Respondent Kielczewski Corp, herein "Respondent K Corp." All three entities used the same accountant. Crucially, Barbara Reed, Respondent BE's President, who was the Office Manager/Administrative Manager of Respondents ECI and K Corp., was, on information and belief, the individual who compiled the documents used by the Region to devise the calculations in the Specification. The Region based the Specification on payroll records from Respondent ECI, Respondent K Corp. and Respondent BE. At a minimum Respondent BE had access to its own payroll records. It therefore cannot claim ignorance to avoid the requirements to answer the Specification allegations with specificity.

d. Even had Respondent BE not been in possession of Respondent ECI and Respondent K Corp's records, the documents are part of the record of Case 22-CA-089865 and hence are public records. Moreover, although the Complaint and Specification issued on July 31, 2017, Respondent BE never asked the Region for copies of the documents upon which it relied. It should, therefore, be held in non-compliance with the Board's Rules.

e. Respondent BE also asserts that the Region erred in using records of Respondent ECI and Respondent K Corp. and should instead have relied solely on Respondent BE's payroll records. However, Respondent BE failed to provide alternative

formulas and supporting figures according to the Rules. Respondent BE's general denial, merely asserting that the Region's "computations are based upon estimates" does not fulfill Respondent BE's obligations under Board Rule 102.56(b) to not only set forth its position opposing the computation of gross backpay, but to furnish appropriate supporting figures. Respondent BE therefore failed to appropriately challenge the formulas the Region utilized in arriving at its calculations. Its Second Amended Answer is therefore deficient, fails to conform to the Board's Rules and should be stricken and deemed admitted under Board Rule 102.56(c).

f. The Board has held, in a similar alter ego case, that a Respondent's failure to answer the allegations in a Compliance Specification with sufficient specificity warranted granting the General Counsel's Motion for Summary Judgment. *D.L. Baker, Inc.*, 330 NLRB 521 (2000). The Board rejected that Respondent's assertion that it could have fulfilled the specificity requirements of Rule 102.56(b) had the General Counsel provided or returned documents, finding that the information regarding its own employees were within its knowledge and control. *D.L. Baker, Inc.*, 330 NLRB at 522. The same is true for the instant matter, where Respondent BE was in possession of its own payroll records, should have had access to the predecessor records and failed to ask the General Counsel for copies of those records. See also, *E.L.C. Electric, Inc.*, 348 NLRB 301 (2006).

g. The Board in *D.L. Baker, Inc.*, also found that Respondent's failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures or alternative calculations to those alleged in the Compliance Specification was "contrary to the specificity requirements of Section 102.56" of the Board's Rules. *D.L. Baker, Inc.*, 330 NLRB at 522. Thus the Board granted the General Counsel's Motion for Summary



Judgment. The General Counsel's Motion here should be granted under the same rationale.

h. The General Counsel has determined that filing a Motion for Summary Judgment with the Board regarding the deficiencies of Respondent BE's Second Amended Answer, filed on December 29, 2017, would cause undue delay to this case that has been pending since 2012. However, pursuant to Board Rule 102.24 and 102.25, the Administrative Law Judge has the authority to rule on this pre-hearing Motion, strike the relevant portions of Respondent's Amended Answer and deem the relevant allegations of the Compliance Specification admitted under Board Rule 102.56(c). See, *IBT Local 469 (Coastal Tank Lines)*, 323 NLRB 210 (1997). In *IBT Local 469* the Judge granted, and the Board affirmed, the General Counsel's Motion to Strike portions of the Respondent's Answer and ordered the Respondent to make offers of proof before he allowed witness testimony. *IBT Local 469 (Coastal Tank Lines)*, 323 NLRB at 213. It is appropriate for the Administrative Law Judge to grant the same relief in the case at hand.

i. In paragraph two of its Second Amended Answer, Respondent BE repeats its defenses that it has not seen documents provided by its alter egos/single employer and predecessor and thus cannot answer the Specification allegations with specificity. Respondent BE also reiterates its contention that the Region should not have used "estimates despite the fact that Respondent has provided exact payroll records of BE post December 13, 2013" and yet provides no supporting figures or calculations. As argued *supra*, these assertions should be rejected.

j. Respondent BE asserts that, since it was incorporated on December 13, 2013, that date is appropriate on which backpay should commence. This is the only assertion

Respondent BE makes that the General Counsel should appropriately contradict at hearing.

k. At paragraph three of its Second Amended Answer to the Specification, Respondent BE asserts that it is a qualified Women's Minority Business under New Jersey law and cannot, therefore be a "successor corporation or entity of" Respondent ECI or Respondent K Corp. This assertion is irrelevant to the Specification allegations and should therefore be stricken. Likewise, Respondent BE's repetition of its rationale for its inability to comport with the Board's Rules because it has insufficient knowledge to answer the Specification allegations and its assertion that the Region should have relied only on Respondent BE payrolls records, without providing its own alternative figures and calculations, should be given no weight.

For the forgoing reasons, the General Counsel respectfully urges that an Order be entered striking the above portions of Respondent BE's Amended Answer, deeming the Specification allegations admitted, save for the start date of the backpay period, and prohibiting Respondent BE from litigating these issues during the Compliance portion of the hearing. Additionally, as Respondent BE has asserted its intention to produce witnesses to aid in its defense to the Specification, the General Counsel respectfully requests the Order require Respondent BE to make offers of proof as to the areas of testimony to be adduced through those witnesses, to prevent needless delay of the hearing in producing witnesses whose testimony would be prohibited. Additionally, the General Counsel requests what further relief as may be just and proper.

Dated at Newark, New Jersey this 29th day of December, 2017.

Respectfully submitted,

/s/ Bert Dice-Goldberg

Bert Dice-Goldberg

Counsel for the General Counsel

National Labor Relations Board

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Newark, NJ 07102

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

ENVIRONMENTAL CONTRACTORS, INC.,  
KIELCZEWSKI CORPORATION AND THEIR  
ALTER EGO, SINGLE EMPLOYER AND/OR  
SUCCESSOR, BE CONSTRUCTION CORPORATION

and

Cases 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA

EXHIBITS 1 THROUGH 6 TO  
GENERAL COUNSEL'S MOTION TO STRIKE  
PORTIONS OF RESPONDENT'S ANSWER

**EXHIBIT 1**

**EXHIBIT 1**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**ENVIRONMENTAL CONTRACTORS, INC.,  
KIELCZEWSKI CORPORATION AND THEIR  
ALTER EGO, SINGLE EMPLOYER AND/OR  
SUCCESSOR, BE CONSTRUCTION CORPORATION**

**and**

**Cases 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957**

**LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA**

**ORDER CONSOLIDATING COMPLAINT, COMPLIANCE SPECIFICATION  
AND NOTICE OF HEARING**

Pursuant to Sections 102.33 and 102.54(b) of the Rules and Regulations of the Board, and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 22-CA-089865, 22-CA-136700, 22-CA-145173 and 22-CA-172597, which are based on charges filed by the Union against Respondents are consolidated and that the Consolidated Complaint is consolidated with the Compliance Specification in this matter.

This Consolidated Complaint, Compliance Specification and Notice of Hearing is based on charges filed by Local 78, Laborers International Union of North American, (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (the Act) and sections 102.15 and 102.54 of the Rules and Regulations of the National Labor Relations Board (Board) and alleges that Environmental Contractors, Inc.,

(Respondent ECI), Kielczewski Corporation (Respondent Kielczewski Corp.) and BE Construction Corporation (Respondent BE Construction and collectively Respondents), alter egos, a single employer and/or successor, have violated the Act as described below.

1. (a) Charge 22-CA-136700 was filed by the Union on September 12, 2014 and a copy was served by regular mail on Respondents on September 15, 2014.

(b) Charge 22-CA-145173 was filed by the Union on January 23, 2015 and a copy was served by regular mail on Respondents on January 28, 2015.

(c) Charge 22-CA-172957 was filed by the Union on March 31, 2016 and a copy was served by regular mail on Respondents on March 31, 2016.

2. At all material times, Respondents have been corporations with an office and place of business in West Orange, New Jersey (Respondents' facility), and have been contractors in the construction industry performing residential and commercial demolition, asbestos abatement, mold and lead removal.

3. At all material times, Respondents have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership.

4. About December 13, 2013, Respondent BE Construction was established by Respondent Kielczewski as a disguised continuation of Respondent Kielczewski.

5. Respondent Kielczewski established Respondent BE Construction, as described above in paragraph 4, for the purpose of evading its responsibilities under the Act.

6. Based on the operations and conduct described above in paragraphs 2 through 5, Respondent Kielczewski and Respondent BE Construction are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

7. At all material times, Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common administration, equipment, purchasing and sales; and have held themselves out to the public as a single-integrated business enterprise.

8. Based on its operations described above in paragraph 7, Respondents constitute a single integrated business enterprise and a single employer within the meaning of the Act.

9. In conducting their operations described above in paragraph 2, during the 12-month period ending June 1, 2017, Respondents performed services valued in excess of \$50,000 in States outside the State of New Jersey.

10. At all material times, Respondents have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

11. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

12. The following employees of Respondents (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time building and  
construction laborers employed by the

Employer in the State of New Jersey, but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

13. On April 23, 2012, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

14. At all times since about April 23, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

15. On January 13, 2014, Administrative Law Judge (ALJ) Steven Davis issued his Decision and Order in Case 22-CA-089865, finding Respondent ECI and Respondent Kielczewski Corp. were alter egos and a single employer and that Respondent Kielczewski was a disguised continuance of Respondent ECI, established to evade its responsibilities under the Act.

16. ALJ Davis also found that Respondent ECI and Respondent Kielczewski violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union and by reducing wages and benefits of unit employees without notice to the Union or providing the Union with an opportunity to bargain over the changes.

17. On February 27, 2014 the Board affirmed ALJ Davis's Decision.

18. On July 3, 2014 the United States Court of Appeals for the Third Circuit enforced the Board's Order in *National Labor Relations Board v. Environmental Contractors, Inc. and Kielczewski Corp., alter egos and a single employer*, Case 14-2815 (3d Cir., July 3, 2014).

19. On about June 16, 2014, the Union again requested that Respondents recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

20. Since about June 16, 2014, Respondents have failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

21. Since about March 1, 2014, Respondents have changed the wages and benefits of the Unit by reducing wages and benefits of the Unit without notice to the Union and without affording the Union an opportunity to bargain with the Respondents.

22. Since about November 17, 2014, the Union has requested orally and in writing, that Respondents furnish the Union with the following information: payroll and financial information necessary for a payroll audit.

23. The information requested by the Union, as described above in paragraph 22 is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

24. Since about December 26, 2014, Respondents, by Slawomir Kielczewski, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 22.

25. About January 1, 2014, Respondent BE Construction purchased the business of Respondent Kielczewski Corp., and since then has continued to operate the business of Respondent Kielczewski Corp. in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Respondent Kielczewski Corp.

26. Based on its operations described above in paragraph 25, Respondent BE Construction has continued the employing entity and is a successor to Respondent Kielczewski Corp.

27. Before engaging in the conduct described above in paragraph 25, Respondent BE Construction was put on notice of Respondent Kielczewski Corp.'s actual liability in Board Case 22-CA-089865 orally, by Slawomir Kielczewski, President, Respondent Kielczewski Corp., to Barbara Reed the President and an agent of Respondent BE Construction.

28. Based on the conduct and operations described above in paragraphs 25 through 27, Respondent BE Construction has continued the employing entity with notice of Respondent Kielczewski Corp.'s actual liability to remedy its unfair labor practices, and Respondent BE Construction is a successor to Respondent Kielczewski Corp.

29. By the conduct described above in paragraphs 19 through 24, Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

#### REMEDY

As part of the remedy for the unfair labor practices alleged above in paragraphs 16 and 19 through 24, the General Counsel seeks an Order requiring that Respondents send, by United States mail, copies of the Notice to Employees to all individuals employed in the Unit since April 23, 2012.

General Counsel also seeks all other relief that may be just and proper to remedy the unfair labor practice alleges.

### COMPLIANCE SPECIFICATION

WHEREFORE, in order to liquidate the amount owed by Respondent and to avoid unnecessary cost or delays, the undersigned issues this compliance specification and alleges as follows:

1. As a result of the conduct described above in paragraphs 16 and 21 of the Consolidated Complaint, bargaining unit employees are entitled to backpay in the manner and amount computed as follows and reflected in **ATTACHMENT A**:

- (a) The backpay period for bargaining unit employees begins on April 23, 2012, the date Respondents unilaterally changed unit employees' terms and conditions of employment, and the backpay period has not ended.
- (b) An appropriate measure of the earnings that all bargaining unit employees would have received during the backpay period is based on an average of the actual hours worked or projected to have been worked by all employees during the backpay period. Using this formula, the earnings estimations are calculated on the average hours worked per pay period based on records provided by Respondent Kielczewski Corp.
- (c) The average weekly hours worked by employees was determined by reviewing Respondent ECI's payroll for the time period 1/1/2012 through 4/21/2013. There was work available during 44 weeks during that period. The total amount of hours worked during the review period was divided



by 44 weeks to get the average number of hours worked per week. There were 5372 total number of hours worked by bargaining unit employees during the payroll review period. There were 44 weeks of work during that period. The total number of hours worked (5372) divided by the number of weeks in which there was work (44), equals 122.09 of average hours worked per week/pay period.

- (d) There are 268 weeks in the backpay period starting 4/23/2012 and calculated through 6/17/2017. Respondents owe 122.09 hours of pay for each of these weeks. (268 weeks X 122.09 hours per week = 32,720 total hours owed.)
- (e) The backpay was calculated using the Class A Rate of \$30.55 per hour from the May 1, 2007 extended collective bargaining agreement. 32,720 hours owed X \$30.55 per hour = \$999,596 backpay owed by Respondents.
- (f) The Backpay was reduced by interim earnings. Respondent Kielczewski Corp.'s payroll shows total Interim Earnings from 1/1/2012 through 4/21/2013, of \$168,296.22. Not all of this timeframe falls within the backpay period. The \$168,296.22 was divided by 6 calendar quarters for the period 1/1/2012 through 4/21/2013 for which payroll records were analyzed. \$168,296.22 divided by 6 calendar quarters, equals \$28,049.27 per quarter. This interim earnings amount was entered on the

BackpayTEC calculation for each quarter falling within the backpay period.

- (g) Respondent BE Construction's payroll shows total interim earnings from 3/24/2016 through 4/21/2016 of \$42,893.77. All of this payroll timeframe falls within the backpay period, so the \$42,893.77 was divided by 2 calendar quarters to equal \$21,446.89 each quarter. This amount was entered as interim earnings for each of 2016 QTR 1 and 2026 QTR 2.
- (h) To calculate interest on backpay, the total backpay owed of \$999,596 was divided by 268 weeks in the backpay period, to arrive at an average weekly pay amount owed of \$3,729.84. This amount was entered into the BackpayTEC program for each week to calculate interest owed on backpay and to calculate the Excess Tax Liability owed.

2. As a result of the conduct described above in paragraphs 16 and 21 of the Consolidated Complaint, Respondents are required to pay benefit fund contributions based on the collective-bargaining agreement which expired on April 30, 2012, and the period after the expiration of the Agreement.

- (a) Respondents were required to make total Fund contributions totaling \$20.07 per hour worked by bargaining unit employees. The amount owed is broken down per Fund and is reflected in **ATTACHMENT B**.
- (b) Fund contributions for all unit employees were calculated based on the average hours of work per pay period during the backpay period multiplied by the fund rate.

(c) Respondents are additionally required to pay interest based on their delinquencies. The Fund's established practice has been to seek interest pursuant to 29 U.S.C. §1132(g)(2)(B) and as calculated pursuant to 26 U.S.C. §6621, and this practice comports with the Board's Order that interest calculations be made in accordance with *Merryweather Optical Co.*, 240 NLRB 1212, 1216 fn. 7 (1979).

3. The estimated total amount of Taxable Income for each year is based on the calculations for backpay in this Compliance Specification for each year of 2012, 2013, 2014, 2015, 2016 and 2017 and is summarized in ATTACHMENT A. Using this total estimated Taxable Income for the various years, federal and state taxes were estimated using the federal and state tax rates for the appropriate years. The federal rates are based on filing taxes as Single filing status.

(a) The estimated total amount of taxes owed for 2012, 2013, 2014, 2015, 2016 and 2017 would have been the amounts set forth in ATTACHMENT A. The estimated total of these amounts are \$172,304 for federal tax and \$33,510 for state tax.

(b) The total estimated amount of the lump sum award that is subject to this excess tax award is \$820,190 and is set forth in ATTACHMENT A. The lump sum amount is based on the backpay calculations described in this Specification. <sup>1</sup> The amount of taxes owed in 2017 is based on the current

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<sup>1</sup> Interest continues to accrue until the payment is made. The lump sum amount will need to be adjusted when backpay is paid to the discriminatees to include interest.

federal and state tax rates and on the assumption that discriminatees will be filing their taxes as Single.<sup>2</sup>

- (c) The estimated adverse tax consequences is the difference between the amount of taxes on the lump sum amount being paid in 2017 and the amount of taxes that would have been charged if these amounts were paid when the backpay was earned in 2012, 2013, 2014, 2015, 2016 and 2017.
- (d) The estimated excess tax liability payment that is to be made to discriminatees is also taxable income and causes additional tax liabilities. ATTACHMENT A also includes a calculation for these supplemental taxes. This amount is called the incremental tax liability. The incremental tax includes all of the taxes that the discriminatees will owe on the excess tax payment. This estimated incremental tax is calculated using the federal tax rate used for calculating taxes for the backpay award and the average state tax rate for 2017. This estimated amount is reflected in ATTACHMENT A.
- (e) The estimated Total Excess Taxes is the total tax consequences for discriminatees receiving a lump-sum award covering a backpay period longer than 1-year. The estimated Total Excess Taxes owed to discriminatees, which is determined by adding the Excess Taxes and Incremental Taxes, is reflected in ATTACHMENT A.

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<sup>2</sup> Although the backpay period continues to accrue to the present date, there is no excess tax liability for backpay that would have been earned in the year a lump sum award is made.



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## ANSWER REQUIREMENT

Respondents are notified that, pursuant to Sections 102.20, 102.21, and 102.56 of the Board's Rules and Regulations, they must file an answer to the Consolidated Complaint and Compliance Specification.

Therefore, the Respondents shall, within 21 days from the date of this Consolidated Complaint, Compliance Specification and Notice of Hearing, file with the undersigned Regional Director, acting in this matter as an agent of the National Labor Relations Board, an original and four (4) copies of an answer to the Consolidated Complaint and Compliance Specification and shall immediately serve a copy thereof on each of the other parties. Unless filed electronically in a pdf form, Respondents should file an original copy of the answer to the Consolidated Complaint and Compliance Specification with this office and shall also serve a copy of the answer on each of the other parties. The answer must be **received by this office on or before August 21 , 2017, or postmarked no later than August 20, 2017.**

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing**, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's

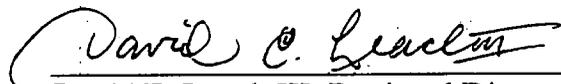
website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by the Respondents or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.21 and 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to this Consolidated Complaint, Compliance Specification and Notice of Hearing is not a pdf file containing the required signature, the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint and Compliance Specification are true.

As to all matters set forth in Compliance Specification paragraphs 1 to 3 that are within the knowledge of Respondents, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondents' knowledge, and set forth in detail Respondents' position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint and Compliance Specification are true. If the answer fails to deny allegations of the Compliance Specification paragraphs 1 to 3 in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the Compliance Specification are true and preclude Respondent from introducing any evidence controverting those allegations.

As to all matters set forth in the Compliance Specification that are within the knowledge of Respondents, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondents' knowledge, and set forth in detail Respondents' position as to the applicable premises and furnish the appropriate supporting figures.

Dated at Newark, New Jersey on the 31<sup>st</sup> day of July, 2017.



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David E. Leach III, Regional Director  
National Labor Relations Board  
Region 22  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, New Jersey 07102

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

Backpay period:

4/23/2012 to 6/17/2017

Interest calculated to:

6/17/2017

ATTACHMENT A

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2012	2	4/7						
2012	2	4/14						
2012	2	4/21						
2012	2	4/28	3,729.85					
2012	2	5/5	3,729.85					
2012	2	5/12	3,729.85					
2012	2	5/19	3,729.85					
2012	2	5/26	3,729.85					
2012	2	6/2	3,729.85					
2012	2	6/9	3,729.85					
2012	2	6/16	3,729.85					
2012	2	6/23	3,729.85					
2012	2	6/30	3,729.85					
2012	2	Total	37,299	28,049	9,249	-	-	9,249
2012	3	7/7	3,729.85					
2012	3	7/14	3,729.85					
2012	3	7/21	3,729.85					
2012	3	7/28	3,729.85					
2012	3	8/4	3,729.85					
2012	3	8/11	3,729.85					
2012	3	8/18	3,729.85					
2012	3	8/25	3,729.85					
2012	3	9/1	3,729.85					
2012	3	9/8	3,729.85					
2012	3	9/15	3,729.85					
2012	3	9/22	3,729.85					
2012	3	9/29	3,729.85					
2012	3	Total	48,488	28,049	20,439	-	-	20,439
2012	4	10/6	3,729.85					
2012	4	10/13	3,729.85					
2012	4	10/20	3,729.85					
2012	4	10/27	3,729.85					
2012	4	11/3	3,729.85					
2012	4	11/10	3,729.85					
2012	4	11/17	3,729.85					
2012	4	11/24	3,729.85					
2012	4	12/1	3,729.85					
2012	4	12/8	3,729.85					
2012	4	12/15	3,729.85					
2012	4	12/22	3,729.85					
2012	4	12/29	3,729.85					
2012	4	Total	48,488	28,049	20,439	-	-	20,439

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

Backpay period:

4/23/2012 to 6/17/2017

Interest calculated to: 6/17/2017

ATTACHMENT A

Year	Qtr.	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2013	1	1/5	3,729.85					
2013	1	1/12	3,729.85					
2013	1	1/19	3,729.85					
2013	1	1/26	3,729.85					
2013	1	2/2	3,729.85					
2013	1	2/9	3,729.85					
2013	1	2/16	3,729.85					
2013	1	2/23	3,729.85					
2013	1	3/2	3,729.85					
2013	1	3/9	3,729.85					
2013	1	3/16	3,729.85					
2013	1	3/23	3,729.85					
2013	1	3/30	3,729.85					
2013	1	Total	48,488	28,049	20,439	-	-	20,439
2013	2	4/6	3,729.85					
2013	2	4/13	3,729.85					
2013	2	4/20	3,729.85					
2013	2	4/27	3,729.85					
2013	2	5/4	3,729.85					
2013	2	5/11	3,729.85					
2013	2	5/18	3,729.85					
2013	2	5/25	3,729.85					
2013	2	6/1	3,729.85					
2013	2	6/8	3,729.85					
2013	2	6/15	3,729.85					
2013	2	6/22	3,729.85					
2013	2	6/29	3,729.85					
2013	2	Total	48,488	28,049	20,439	-	-	20,439
2013	3	7/6	3,729.85					
2013	3	7/13	3,729.85					
2013	3	7/20	3,729.85					
2013	3	7/27	3,729.85					
2013	3	8/3	3,729.85					
2013	3	8/10	3,729.85					
2013	3	8/17	3,729.85					
2013	3	8/24	3,729.85					
2013	3	8/31	3,729.85					
2013	3	9/7	3,729.85					
2013	3	9/14	3,729.85					
2013	3	9/21	3,729.85					
2013	3	9/28	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A

Backpay period:

4/23/2012 to 6/17/2017

Interest calculated to:

6/17/2017

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2013	3	Total	48,488		48,488	-	-	48,488
2013	4	10/5	3,729.85					
2013	4	10/12	3,729.85					
2013	4	10/19	3,729.85					
2013	4	10/26	3,729.85					
2013	4	11/2	3,729.85					
2013	4	11/9	3,729.85					
2013	4	11/16	3,729.85					
2013	4	11/23	3,729.85					
2013	4	11/30	3,729.85					
2013	4	12/7	3,729.85					
2013	4	12/14	3,729.85					
2013	4	12/21	3,729.85					
2013	4	12/28	3,729.85					
2013	4	Total	48,488		48,488	-	-	48,488
2014	1	1/4	3,729.85					
2014	1	1/11	3,729.85					
2014	1	1/18	3,729.85					
2014	1	1/25	3,729.85					
2014	1	2/1	3,729.85					
2014	1	2/8	3,729.85					
2014	1	2/15	3,729.85					
2014	1	2/22	3,729.85					
2014	1	3/1	3,729.85					
2014	1	3/8	3,729.85					
2014	1	3/15	3,729.85					
2014	1	3/22	3,729.85					
2014	1	3/29	3,729.85					
2014	1	Total	48,488		48,488	-	-	48,488
2014	2	4/5	3,729.85					
2014	2	4/12	3,729.85					
2014	2	4/19	3,729.85					
2014	2	4/26	3,729.85					
2014	2	5/3	3,729.85					
2014	2	5/10	3,729.85					
2014	2	5/17	3,729.85					
2014	2	5/24	3,729.85					
2014	2	5/31	3,729.85					
2014	2	6/7	3,729.85					
2014	2	6/14	3,729.85					
2014	2	6/21	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A			Backpay period: 4/23/2012 to 6/17/2017		Interest calculated to: 6/17/2017			
Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2014	2	6/28	3,729.85					
2014	2	Total	48,488		48,488	-	-	48,488
2014	3	7/5	3,729.85					
2014	3	7/12	3,729.85					
2014	3	7/19	3,729.85					
2014	3	7/26	3,729.85					
2014	3	8/2	3,729.85					
2014	3	8/9	3,729.85					
2014	3	8/16	3,729.85					
2014	3	8/23	3,729.85					
2014	3	8/30	3,729.85					
2014	3	9/6	3,729.85					
2014	3	9/13	3,729.85					
2014	3	9/20	3,729.85					
2014	3	9/27	3,729.85					
2014	3	Total	48,488		48,488	-	-	48,488
2014	4	10/4	3,729.85					
2014	4	10/11	3,729.85					
2014	4	10/18	3,729.85					
2014	4	10/25	3,729.85					
2014	4	11/1	3,729.85					
2014	4	11/8	3,729.85					
2014	4	11/15	3,729.85					
2014	4	11/22	3,729.85					
2014	4	11/29	3,729.85					
2014	4	12/6	3,729.85					
2014	4	12/13	3,729.85					
2014	4	12/20	3,729.85					
2014	4	12/27	3,729.85					
2014	4	Total	48,488		48,488	-	-	48,488
2015	1	1/3	3,729.85					
2015	1	1/10	3,729.85					
2015	1	1/17	3,729.85					
2015	1	1/24	3,729.85					
2015	1	1/31	3,729.85					
2015	1	2/7	3,729.85					
2015	1	2/14	3,729.85					
2015	1	2/21	3,729.85					
2015	1	2/28	3,729.85					
2015	1	3/7	3,729.85					
2015	1	3/14	3,729.85					

NLRB Backpay Calculation:

Case Name: ECI/Kielczewski Corp/BE Construction

Backpay period:

4/23/2012 to 6/17/2017

Interest  
calculated to:

6/17/2017

ATTACHMENT A

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2015	1	3/21	3,729.85					
2015	1	3/28	3,729.85					
2015	1	Total	48,488		48,488	-	-	48,488
2015	2	4/4	3,729.85					
2015	2	4/11	3,729.85					
2015	2	4/18	3,729.85					
2015	2	4/25	3,729.85					
2015	2	5/2	3,729.85					
2015	2	5/9	3,729.85					
2015	2	5/16	3,729.85					
2015	2	5/23	3,729.85					
2015	2	5/30	3,729.85					
2015	2	6/6	3,729.85					
2015	2	6/13	3,729.85					
2015	2	6/20	3,729.85					
2015	2	6/27	3,729.85					
2015	2	Total	48,488		48,488	-	-	48,488
2015	3	7/4	3,729.85					
2015	3	7/11	3,729.85					
2015	3	7/18	3,729.85					
2015	3	7/25	3,729.85					
2015	3	8/1	3,729.85					
2015	3	8/8	3,729.85					
2015	3	8/15	3,729.85					
2015	3	8/22	3,729.85					
2015	3	8/29	3,729.85					
2015	3	9/5	3,729.85					
2015	3	9/12	3,729.85					
2015	3	9/19	3,729.85					
2015	3	9/26	3,729.85					
2015	3	Total	48,488		48,488	-	-	48,488
2015	4	10/3	3,729.85					
2015	4	10/10	3,729.85					
2015	4	10/17	3,729.85					
2015	4	10/24	3,729.85					
2015	4	10/31	3,729.85					
2015	4	11/7	3,729.85					
2015	4	11/14	3,729.85					
2015	4	11/21	3,729.85					
2015	4	11/28	3,729.85					
2015	4	12/5	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A	Backpay period:	Interest calculated to:
	4/23/2012 to 6/17/2017.	6/17/2017

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2015	4	12/12	3,729.85					
2015	4	12/19	3,729.85					
2015	4	12/26	3,729.85					
2015	4	Total	48,488		48,488	-	-	48,488

2016	1	1/2	3,729.85					
2016	1	1/9	3,729.85					
2016	1	1/16	3,729.85					
2016	1	1/23	3,729.85					
2016	1	1/30	3,729.85					
2016	1	2/6	3,729.85					
2016	1	2/13	3,729.85					
2016	1	2/20	3,729.85					
2016	1	2/27	3,729.85					
2016	1	3/5	3,729.85					
2016	1	3/12	3,729.85					
2016	1	3/19	3,729.85					
2016	1	3/26	3,729.85					
2016	1	Total	48,488	21,447	27,041	-	-	27,041

2016	2	4/2	3,729.85					
2016	2	4/9	3,729.85					
2016	2	4/16	3,729.85					
2016	2	4/23	3,729.85					
2016	2	4/30	3,729.85					
2016	2	5/7	3,729.85					
2016	2	5/14	3,729.85					
2016	2	5/21	3,729.85					
2016	2	5/28	3,729.85					
2016	2	6/4	3,729.85					
2016	2	6/11	3,729.85					
2016	2	6/18	3,729.85					
2016	2	6/25	3,729.85					
2016	2	Total	48,488	21,447	27,041	-	-	27,041

2016	3	7/2	3,729.85					
2016	3	7/9	3,729.85					
2016	3	7/16	3,729.85					
2016	3	7/23	3,729.85					
2016	3	7/30	3,729.85					
2016	3	8/6	3,729.85					
2016	3	8/13	3,729.85					
2016	3	8/20	3,729.85					
2016	3	8/27	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A	Backpay period:	Interest calculated to:
	4/23/2012 to 6/17/2017	6/17/2017

Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2016	3	9/3	3,729.85					
2016	3	9/10	3,729.85					
2016	3	9/17	3,729.85					
2016	3	9/24	3,729.85					
2016	3	Total	48,488		48,488	-	-	48,488
2016	4	10/1	3,729.85					
2016	4	10/8	3,729.85					
2016	4	10/15	3,729.85					
2016	4	10/22	3,729.85					
2016	4	10/29	3,729.85					
2016	4	11/5	3,729.85					
2016	4	11/12	3,729.85					
2016	4	11/19	3,729.85					
2016	4	11/26	3,729.85					
2016	4	12/3	3,729.85					
2016	4	12/10	3,729.85					
2016	4	12/17	3,729.85					
2016	4	12/24	3,729.85					
2016	4	12/31	3,729.85					
2016	4	Total	52,218		52,218	-	-	52,218
2017	1	1/7	3,729.85					
2017	1	1/14	3,729.85					
2017	1	1/21	3,729.85					
2017	1	1/28	3,729.85					
2017	1	2/4	3,729.85					
2017	1	2/11	3,729.85					
2017	1	2/18	3,729.85					
2017	1	2/25	3,729.85					
2017	1	3/4	3,729.85					
2017	1	3/11	3,729.85					
2017	1	3/18	3,729.85					
2017	1	3/25	3,729.85					
2017	1	4/1	3,729.85					
2017	1	Total	48,488		48,488	-	-	48,488
2017	2	4/8	3,729.85					
2017	2	4/15	3,729.85					
2017	2	4/22	3,729.85					
2017	2	4/29	3,729.85					
2017	2	5/6	3,729.85					
2017	2	5/13	3,729.85					
2017	2	5/20	3,729.85					

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ATTACHMENT A				Backpay period: 4/23/2012 to 6/17/2017		Interest calculated to: 6/17/2017			
Year	Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2017	2	5/27	3,729.85						
2017	2	6/3	3,729.85						
2017	2	6/10	3,729.85						
2017	2	6/17	3,729.85						
2017	2	6/24							
2017	2	7/1							
2017	2	Total	41,028		41,028	-	-	41,028	
					<b>Totals</b>	<b>820,190</b>	<b>-</b>	<b>-</b>	<b>820,190</b>
						<b>Net Backpay (Withholdings)</b>			<b>820,190</b>
						<b>Expenses (No Withholdings)</b>			<b>-</b>
						<b>Daily Compound Interest (No Withholdings)</b>			<b>68,752</b>
						<b>Total Backpay, Expenses and Interest</b>			<b>888,941</b>

Notes

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NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

ACHMENT A		Backpay period: 4/23/2012 to 6/17/2017		Interest calculated to: 6/17/2017			
Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses

Adjusted Taxes for Lump Sum Backpay

Case Name: ECI/Kielczewski Corp/BE Construction  
ATTACHMENT A

Year	Taxable Income (Backpay)	Filing Status	State	Federal Tax	State Tax
2008	0	Single Filer	AZ	0	0
2009	0	Single Filer	AZ	0	0
2010	0	Single Filer	AZ	0	0
2011	0	Single Filer	AZ	0	0
2012	50,127	Single Filer	NJ	8,562	2,301
2013	137,854	Single Filer	NJ	31,892	6,322
2014	193,952	Single Filer	NJ	47,862	8,894
2015	193,952	Single Filer	NJ	47,610	8,894
2016	154,788	Single Filer	NJ	36,377	7,098
<b>Taxes Paid:</b>				<b>172,304</b>	<b>33,510</b>
<b>Sum '00 to '16</b>	<b>730,673</b>	<b>Single Filer</b>	<b>NJ</b>	<b>245,165</b>	<b>33,507</b>
<b>2017</b>	<b>89,516</b>			<b>72,861</b>	<b>0</b>
				<b>Incremental Tax on Backpay:</b>	<b>57,681</b>
<b>Total Excess Tax on Backpay:</b>				<b>130,541</b>	
<b>Interest on Backpay:</b>	<b>68,752</b>			<b>Tax on Interest:</b>	<b>3,153</b>
				<b>Incremental Tax on Interest:</b>	<b>24,049</b>
<b>Total Excess Tax on Interest:</b>				<b>54,428</b>	

NLRB Backpay Calculation

Case Name: ECI/Kielczewski Corp/BE Construction

Attachment A			Backpay period: 4/23/2012 to 6/17/2017		Interest calculated to: 6/17/2017		
Qtr	Week End	Gross Backpay	Quarter Interim Earnings	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses

Additional Tax Liability: 0  
 Total Excess Tax Liability: 184,969

**ENVIRONMENTAL CONTRACTORS, INC AND  
KIELCZEWSKI CORPORATION AND  
BE CONSTRUCTION CORP, ALTER EGOS AND  
A SINGLE EMPLOYER  
Cases 22-CA-089865, 22-CA-136700, 22-CA-145173, 22-CA-172957**

**APPENDIX B**

<b>FUNDS</b>	<b>Hourly Rate</b>	<b>Hours Owed</b>	<b>Amount Owed</b>
Welfare	\$8.85	32,720	\$289,572
Pension	\$5.15	32,720	\$168,508
Annuity	\$4.45	32,720	\$145,604
Training	\$0.92	32,720	\$30,102
LECET	\$0.25	32,720	\$8,180
Health & Safety	\$0.05	32,720	\$1,636
LEROF	\$0.40	32,720	\$13,088

**\$656,690 TOTAL FUNDS OWED THROUGH 6/17/2017**



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**EXHIBIT 2**

**EXHIBIT 2**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

ENVIRONMENTAL CONTRACTORS, INC.,  
AND KIELCZEWSKI CORP., ALTER EGOS  
AND A SINGLE EMPLOYER

and

Case No. 22-CA-089865

LOCAL 78, LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA

*Bert Dice-Goldberg, Esq.*, for the General Counsel.

DECISION

Statement of the Case

**STEVEN DAVIS, Administrative Law Judge:** Based on a charge and a first amended charge filed on September 21, 2012 and August 28, 2013, respectively, by Local 78, Laborers International Union of North America (Union), a complaint was issued on July 31, 2013 against Environmental Contractors, Inc., (ECI) and Kielczewski Corp. (KC), Alter Egos and a Single Employer, herein called ECI, KC or Respondents.

The complaint alleges and the answer admits that, at all material times, ECI and KC have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. The complaint also alleges and the answer also admits that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

The complaint further alleges and the Respondents deny that ECI established KC for the purpose of evading its responsibilities under the Act, that both companies are alter egos and a single employer within the meaning of the Act, and that they are a single-integrated business enterprise and a single employer within the meaning of the Act.

The complaint also alleges that following the Board's certification of the Union as the exclusive collective-bargaining representative of ECI's unit employees, the Respondents refused the Union's request to recognize and bargain with it. It is alleged that, at the same time, the Respondents changed the wages and benefits they paid to unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse.

The Respondents' answer denied the material allegations of the complaint, other than those which they admitted, including those set forth above, and on September 24, 2013, a hearing was held before me in Newark, NJ.<sup>1</sup> Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the brief filed

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<sup>1</sup> Following the close of the hearing I received GC Exhibits 24 and 24, a video recording and transcript of a conversation between Union organizer Leonardo Naranjo and Respondent supervisor Peter Cybura. They are hereby received in evidence.

by the General Counsel,<sup>2</sup> I make the following:

### Findings of Fact

#### 5 I. Jurisdiction and Labor Organization Status

The Respondents, having an office and place of business in West Orange, New Jersey, have been contractors in the construction industry doing residential and commercial demolition, asbestos removal, mold and lead removal. The complaint alleges, and the answer admits, that during the 12-month period ending September 30, 2012, the Respondents performed services valued in excess of \$50,000 in states outside the State of New Jersey. I therefore find and conclude that the Respondents have been employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

15 The Respondents' answer denied knowledge that the Union is a statutory labor organization. Abraham Hernandez, a Union Business Agent and organizer, testified that it represents employees working in the environmental industry, including the removal of asbestos, lead and hazardous waste. Hernandez stated that the New Jersey Building Laborers District Council is a board comprised of representatives of all the Laborers' locals of the Laborers International Union in New Jersey. The Union is a member of that organization. Hernandez further stated that, prior to September, 2008, Local 1030, Laborers International Union, represented employers in New Jersey, but subsequent to that date, the International Union transferred the representational rights of Local 1030 to Local 78, the Charging Party. Moreover, in a Stipulated Election Agreement approved by the Regional Director on March 20, 2012, ECI agreed, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. The Request for Postponement

30 The Respondents were advised in the complaint which was issued on July 31, 2013, that the hearing was scheduled for September 24. In the late afternoon of September 23, Respondents' attorney, Waldo Carkhuff, called General Counsel Dice-Goldberg and said that he could not be present at the hearing due to an unspecified "conflict." General Counsel advised him that at that late hour he could not consent to an adjournment and gave him Associate Chief Administrative Law Judge Biblowitz' contact information.

40 Upon my arrival at the hearing the following day, I was advised by Judge Biblowitz that he received a phone message from Carkhuff at 4:00 p.m. the previous afternoon in which Carkhuff advised that he could not appear at the hearing due to a "conflict." Carkhuff sent a fax to Judge Biblowitz at that time, as follows:

45 <sup>2</sup> I was administratively advised that on December 13, 2013, a Consent Order Granting Interim Injunction was entered into between the Respondents and the General Counsel pursuant to Section 10(j) of the Act. Pending the disposition of the proceeding before the Board, the Order enjoined the Respondents from refusing to recognize and bargain with Local 78, making unilateral changes to terms and conditions of employment of their employees, and ordered the Respondents to recognize and bargain with the Union at the request of the Union, and restore any or all of the terms and conditions of employment of the unit employees as established by the collective-bargaining agreement which expired on April 30, 2012. I have received the Order in evidence as General Counsel's Exhibit 1(h).

Re: Adjournment

Pursuant to my telephone calls of 9-23-13 to your Honor and our adversary, I will be unable to appear tomorrow morning in the above matter. ECI 22-CA-089865. Thank you.

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Various subpoenas were issued by General Counsel to the Respondents for the appearance of Slawomir Kielczewski on September 24 at this hearing. A notice attached to the charge states that the hearing will be held on the date and hour indicated and that postponements will not be granted unless good and sufficient grounds are shown and the formal requirements are met, including that the request must include the grounds for the request, and the tentative dates for the rescheduled hearing. In addition, the positions of all parties must be ascertained and set forth in the request and copies must be simultaneously served on the other parties. The notice states that "except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing."

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Neither Respondents' attorney Waldo Carkhuff nor his clients, the Respondents, appeared at the hearing. The hearing opened at 10:34 a.m. at which time I denied the Respondents' request for postponement. The General Counsel's first witness, Hernandez, testified briefly. At about 11:00 a.m., I asked the General Counsel to phone Carkhuff and advise him that his request for a postponement was denied and that I would adjourn the hearing for one hour to permit him to attend the hearing if he wished.

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During the recess, the General Counsel phoned Carkhuff and so advised him. He stated that Carkhuff said that it was "impossible" for him to attend the hearing because he was "doing something medical." The General Counsel sent him a fax and e-mail confirming their conversation. The hearing resumed at 12:16 p.m. Neither Carkhuff nor his clients appeared.

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I affirm my ruling denying the Respondents' request for postponement. No details were given of the alleged "conflict" Carkhuff had with the hearing date. Presumably, he would have been able to resolve the alleged conflict earlier since he had been advised of the hearing date nearly two months before. When given the opportunity to appear at the hearing, Carkhuff claimed that "something medical" made it impossible for him to appear. Again, no details were provided. The request for postponement lacks merit and is denied.

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### III. The Facts

#### A. Background

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On May 1, 2007, the Building Contractors Association of New Jersey (Association) which represented ECI and other employers in the construction industry, entered into a collective-bargaining agreement with the New Jersey Building Laborers District Council which was effective until April 30, 2012. That agreement was a pre-hire Section 8(f) contract.

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ECI's answer admits that at all times prior to December 29, 2011, it was an employer-member of an Association which represented it and other employers in the construction industry, and that it authorized the Association to represent it in negotiating and administering collective-bargaining agreements with the Union. ECI's answer further admits that on about December 29, 2011, it gave timely notice that it was revoking its authorization to the Association to negotiate on its behalf, and terminating the collective-bargaining agreement.

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On March 7, 2012, the Union filed a petition seeking to represent the employees of ECI. The Union won an election held on April 11, 2012, and thereafter, on April 23, the Union was

certified as the exclusive collective-bargaining representative of the employees of ECI in the following unit:

5 All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

10 The complaint alleges that, at all times since about April 23, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

### B. The Request to Bargain

15 Hernández and Business Agent Radosaw Korek testified that on April 11, the day of the election, after the ballots were counted and the Tally of Ballots was distributed to the parties, they attempted to speak to Slawomir Kielczewski, the president of ECI.<sup>3</sup> They approached him and offered a handshake, and said "so let's talk, let's open and follow up our future relationship." Slawomir "wrestled with us.. pushed us out of the office," telling them twice, "get the fuck out of  
20 my office." Later, Korek entered the office and told Slawomir that the Union won the election. Slawomir stepped outside, and "kicked us out on the sidewalk," telling them to "get the fuck out of my property."<sup>4</sup>

25 Korek testified that, following the election, he attempted to speak to the employees to learn if their working conditions had changed. He left several phone messages and visited their homes, but received no response from the workers.

30 Korek called Slawomir at least three times in June to ask him about a new company, Kielczewski Corp., that the Union believed had been formed and had begun performing jobs. He also attempted to speak to Slawomir's brother, Wesley Kielczewski. On each occasion, Slawomir and Wesley refused to speak about the Union, Slawomir saying "we have nothing to discuss in this matter about the union issue between my company and me." Wesley told him he had to speak to Slawomir.

35 Union organizer Oscar Borreo testified that he and organizer Leonardo Naranjo visited a jobsite at 133 Summit Avenue in Summit, New Jersey on June 21, 2012. Naranjo recorded his conversation with supervisor Peter Cybura.<sup>5</sup> Apparently, Naranjo posed as an employee seeking work. Cybura identified himself as the supervisor and asked Naranjo if he was "union." Naranjo denied being "union." Cybura said that the Employer "is not with the Union" because  
40 union workers were lazy and earn about \$30 per hour, whereas non-union employees earn \$10 or \$15 per hour.

45 <sup>3</sup> In various documents filed in 2010 through 2012 by ECI with the New Jersey Department of Labor, and documents issued by that agency, Slawomir Kielczewski is listed as the president of ECI. Because several of the Respondents' officials have the same last name, I will refer to them by their first names.

<sup>4</sup> Inasmuch as the Respondent made no appearance at the hearing and presented no witnesses, the testimony of all the witnesses who testified in behalf of the General Counsel are uncontradicted. I credit their testimony.

50 <sup>5</sup> Cybura is listed on KC payroll documents as being "NJ Supervisor" and a website maintained by KC states that he is the "project manager/estimating Environmental Services."

Naranjo asked for the name of the company, adding that he could not see the name of the company on the truck. Cybura said "because we paint this. Because that was union company, we not union company anymore." He added that prior to that time the name of the company was Environmental, but it was now called Kielczewski Corporation. Cybura added that the owner of Kielczewski is the same owner of Environmental – "the same owner. He just change the name." Cybura told the Union agents that when they work in New York "we are with the Union in New York, Local 78" but the company no longer works in New York.

A "Notification of Asbestos Abatement" signed by Slawomir for that job listed KC as the abatement contractor. However, the vehicle used by KC on that job is registered to ECI but bore no KC logo. Moreover, a notebook in the cab of the truck entitled "asbestos abatement project log book" bore the notations "Summit Parmely Apt. Building, 133 Summit Avenue, ECI Project Number 12023-AR."

Organizer Borreo testified that he visited ECI's office at 235 Watchung Avenue and photographed the vehicles there. Some of the trucks bore an ECI logo, and others did not.

Organizer Saverio Samarelli and Vila testified that they visited Blair Academy on October 4, 2012. They asked in the office for "ECI." The receptionist, David S.,<sup>6</sup> said "you mean the abatement contractor." They said "yes," and the receptionist said "he's under Kielczewski Corp.," Vila spoke with Wesley about ECI, with Wesley saying that there were issues with employees making personal phone calls at work and not being productive. Wesley said that "any issues regarding the union should be directed to his brother, the owner." Samarelli left his business card with Wesley, and asked that his brother call him. Received in evidence was a photograph of a sign bearing Kielczewski Corp's name at the site and a truck. Samarelli stated that he saw a man wearing a shirt bearing an ECI logo at the jobsite.

On October 15, 2012, Samarelli visited a jobsite in Newark where he spoke to and recorded his conversation with Wesley who recognized Samarelli from his visit on October 4. Samarelli identified himself as being from the International Union, but working in behalf of Local 78. He attempted to learn what type of work the company was doing at the jobsite and how many employees worked there. Wesley was generally noncommittal, advising Samarelli to speak with his brother who was the boss of Environmental Contracting and remarking "since you're union and I'm not union. I really can't disclose too much information."

Wesley complained about the high labor cost when the company was a union contractor, paying his employees over \$50 per hour including benefits. He admitted that he was now paying his employees perhaps \$20 less per hour since he did not pay them any benefits. Wesley conceded that compared to the wages he previously paid, there was a "big difference," estimating that if employees worked 1,000 hours, the company would save \$20,000. Wesley added "that answers your question. If you have a job, if you're talking about millions, if somebody wishes to go non-union then you get an even bigger difference. You know what I'm saying?"

When asked if stiff competition was the reason his company went "non-union", Wesley answered "well, yes, yes and no. I don't even know what's the main reason. I'm not going there. I don't want to speak about something. " Wesley also complained that he believed that his competitors who do prevailing wage work do not pay their employees the proper wage, but his

<sup>6</sup> No further identification of the man was made.

company does – “my problem is my competition is in the position [that] their numbers are lower.”

### **C. The Alter Ego and Single Employer Status of the Respondents**

5           The Respondents admit that they have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. The Respondents also admit that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

10           ECI applied for an asbestos license in February, 2011. The application states that ECI was incorporated in December, 1993, and lists Slawomir Kielczewski as its president. Numerous jobs were listed as having been done in 2010 with the following scope: asbestos abatement, demolition, mold remediation and asbestos remediation,

15           Kielczewski Corporation filed an application for an asbestos license in May, 2012. It stated that it was incorporated on December 22, 2010, and listed its president as Slawomir Kielczewski. A website maintained by KC states that KC “is a company that is comprised of former employees of EC” and then directs the reader to ECI’s website for the credentials of those workers.

20           Both ECI and KC’s applications list their address as 235 Watchung Avenue, West Orange, New Jersey. That location is owned by Mariola Kielczewski, the ex-wife of Slawomir, who leased it to ECI in August, 2010.

25           The KC application contains a letter dated May 8, 2012, in which Slawomir advises the New Jersey Asbestos Control & Licensing department that certain equipment will be sold to KC “in the future.” The lengthy list of equipment to be sold, according to Hernandez, includes “pretty much all of the equipment that he possess at ECI.” On May 24, 2013, KC was issued an asbestos license which permitted it to “perform any type of asbestos work.”

30           Certain unit employees of ECI were retained by KC. They include Nathaniel Couram, Serhiy Drozdyak, Henryk Maciorowski, Jacek Marosz, Piotr Piecuch, and Wieslaw Piecuch. ECI clerical employees Mariola Kielczewska, Barbara Reed, and Rafal Skrzypcak also continued their employment with KC.

35           Bids for work and proposals for both companies were prepared by Slawomir and Cybura. ECI continued to bid on work in its name. In January, 2012 and thereafter, it bid on certain work. ECI’s proposals noted that “work performed after April 30, 2012 will be open shop only” or stated that “work is priced to be completed non-union after May 1, 2012.”

40           Certain of KC’s proposals for jobs dated April, 2012 and later also stated that “work performed after April 30, 2012 will be open shop only.” Also, exclusions noted are “union labor” and “union harmony.”

45           Both ECI and KC use the same vendors. For example, both use Circle Recycling, Inc., Circle Rubbish Removal, Inc., and Sky Environmental Services, Inc. Both companies have the same account number at Home Depot Credit Services, American Express and Valley National Bank.

### **D. The Change in the Employees’ Terms and Conditions of Employment**

50           The complaint alleges that following the Board’s certification of the Union as the

5 exclusive collective-bargaining representative of ECI's unit employees, the Respondents changed the wages and benefits they paid to unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse. The evidence supports that allegation.

10 The Respondents' payroll records in evidence show that ECI's unit employees were paid according to the Association-Union contract, but then when they were employed by KC after June, 2012, their wages and benefits changed.

15 For example, Wieslaw Piecuch was classified as a Laborer Class A when employed by ECI, and earned \$29.05 per hour. He received pension, health and "other" benefits of \$77.20, .40, and \$109.36, respectively.<sup>7</sup> At KC in July, 2012, however, he received a wage rate of \$29.85 per hour, and health benefits only.

20 Similarly, Piotr Piecuch, classified as a cleaner and Laborer Class A at ECI, earned a wage rate of \$29.05 and pension, health and "other" benefits of \$77.20, .40, and \$109.36.<sup>8</sup> However, at KC, in May, 2012, he earned \$35.00 per hour, but no benefits.

25 Further, Nathaniel Couram, a cleaner and asbestos handler, received \$29.00 per hour at ECI, and pension, health and "other" benefits of \$62.64, .40, and \$118.88, respectively.<sup>9</sup> However, in June, 2012, he received a wage rate of \$35.00 per hour and no benefits at KC.

## Analysis and Discussion

### I. The Alter Ego and Single Employer Status of the Respondents

30 When the General Counsel alleges that an entity is the alter ego of another company, subject to the latter's legal and contractual obligations, the General Counsel has the burden of establishing that status. *U.S. Reinforcing, Inc.*, 350 NLRB 404, 404 (2007). The determination of alter ego status is a question of fact for the Board, resolved by an examination of all of the attendant circumstances.

35 The Board generally will find an alter ego relationship when two entities have substantially identical ownership, management, business purposes, operations, equipment, customers and supervision. Not all of these indicia need be present, and no one of them is a prerequisite to finding an alter ego relationship. Unlawful motivation is not a necessary element of an alter ego finding, but the Board also considers whether the purpose behind the creation of the suspected alter ego was to evade responsibilities under the Act. *McCarthy Construction Co.*, 40 355 NLRB 50, 52 (2010), adopted in 355 NLRB 365 (2010); *U.S. Reinforcing*, above.

45 The Respondents admit that they have had substantially identical management, business purposes, operations, equipment, customers, supervision and ownership. In addition, some of the same employees of ECI were retained by KC to perform the same work. The same clerical staff was employed. The same vendors and certain vendor account numbers continued to be used by KC. The Respondents also admit that in about September, 2011, KC was established by ECI as a disguised continuation of ECI.

50 <sup>7</sup> Those benefits were received for the payroll dated January 4, 2012.

<sup>8</sup> Those benefits were received for the payroll dated January 4, 2012.

<sup>9</sup> Those benefits were received for the payroll dated February 27, 2012.

In *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942), the Supreme Court said that "[w]hether there was a *bona fide* discontinuance and a true change of ownership ... or merely a disguised continuance of the old employer is a question of fact." The Supreme Court noted that if "there was merely a change in name or in apparent control ... there is added ground for compelling obedience." In such cases, where there is only a technical change in the structure or identity of the employing entity, "without any substantial change in its ownership or management," it has been held that the new employer "is in reality the same employer" and subject to the same legal and contractual obligations. *Howard Johnson v., Detroit Joint Board*, 417 U.S. 249, 252 fn. 5, 262 fn. 9 (1974).

The Respondents deny that ECI established KC for the purpose of evading its responsibilities under the Act, that both companies are alter egos and a single employer within the meaning of the Act, and that they are a single-integrated business enterprise and a single employer within the meaning of the Act.

The evidence is clear that ECI and KC are alter egos. First, as set forth above, they admit to the facts establishing an alter ego relationship, but deny the conclusion that must be drawn therefrom. They also admit that KC was established by ECI as a disguised continuance of ECI.

Also, it is clear that KC was formed for the purpose of evading its responsibilities under the Act. The Respondents believed that operating as a union company hindered its ability to be competitive in the marketplace. Thus, supervisor Cybura and Slawomir's brother Wesley complained about the high cost of Union wages and benefits, whereas, as a non-union company, the workers were paid less since they received no benefits. Cybura admitted that ECI's name was obliterated from its trucks because "we not union company anymore."

Similarly, the Respondents' proposals for jobs stated that after April 30, 2012, bids for work would be "open shop only" and priced "non-union."

The Respondents thus had a plan to reduce labor costs. Pursuant to that plan, after their contract with the Association expired, they refused to recognize the Union, withdrew recognition from it and refused to bargain with it following its certification, and changed the compensation paid to its employees.

The timing of the undisputed events herein and the Respondents' actions confirm this plan. In late December, 2011, the Respondents gave timely notification that it was withdrawing from the Association and did not authorize it to bargain in its behalf following the expiration of its contract with the Association on April 30, 2012. They notified their prospective customers that following April 30, 2012, their bids would be based on non-union rates, and the Respondents chose to ignore the Union's certification on April 23, 2012.

Thus, ECI made clear its intent to operate KC as a non-union contractor with lower labor costs and thereby avoid its obligation to bargain with the Union which was certified as their employees' exclusive collective-bargaining representative. *E.L.C. Electric, Inc.*, 359 NLRB No. 20, slip op. at 9 (2012).

I also find that the Respondents are a single employer. Two or more ostensibly separate entities may be found to constitute a single employer where they constitute a single integrated enterprise. In determining whether such a relationship exists, the Board and courts consider four factors: common ownership, common management, interrelated operations, and centralized

control of labor relations. *Radio Local 1264, IBEW v. Broadcast Service of Mobile*, 380 U.S. 255, 256 (1965). None of the four factors is controlling, and not all factors need be present to support a single employer finding. Rather, single employer status depends on all the circumstances and is characterized by the absence of an arm's-length relationship between  
 5 unintegrated companies. *Flat Dog Productions, Inc.*, 347 NLRB 1180, 1181-1182 (2006).

Here, Slawomir was the main actor of both companies. He owned and was the president of both, he filed documents with regulatory agencies on behalf of both, was viewed by  
 10 supervisors of KC as being in charge of that company. Those supervisors told the Union agents to speak to Slawomir for information regarding KC. The supervisors and managers were the same for both companies. Their operations were interrelated. Both did the same type of work and Swalomir bid on projects for both. They used the same location, certain of the same unit employees, the same clerical workers, vehicles owned by ECI were used by both companies, KC took over the same equipment used by ECI, the same vendor account numbers were used,  
 15 and there was no evidence that anyone other than Slawomir determined the labor relations of the two companies.

I accordingly find and conclude that ECI and KC were a single integrated enterprise, and  
 20 a single employer.

## II. The Refusal to Bargain

The complaint alleges that following the Board's certification of the Union, the  
 25 Respondents refused the Union's request to recognize and bargain with it. As set forth above, the Union's request to bargain, even immediately following its election victory on April 11, was met with curses and eviction from the Respondents' office. No clearer message could be sent.

Thereafter, following the April 23 certification, Union agent Korek phoned president  
 30 Slawomir at least three times. Each time, Slawomir refused to speak with him about the Union's relationship with the Respondents. Other attempts to speak with Wesely, Slawomir's brother, were similarly unproductive, with the Union's agents being told to speak to Slawomir. Union business cards were left with Slawomir's brother, Wesley, who was asked to have Slawomir call him, but he did not.

Union agent Naranjo's June 21 conversation with supervisor Cybura is reflective of the  
 35 Respondents' motivation. At a jobsite, Cybura told him they ECI's name was removed from the truck because "we not union company anymore."

Having found that the Respondents are a single employer, the bargaining unit remained  
 40 intact. I find that, as a single employer, the Respondents had a continuing obligation to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees, and that the bargaining unit remained an appropriate unit following the establishment of KC. I find that the Respondents violated Section 8(a)(5) and (1) of the Act by  
 45 refusing to recognize and bargain with the Union.

I also find that the Respondents unilaterally changed the wages and benefits it paid to its  
 50 employees. As set forth above, the unit workers at ECI were paid the wage rate, pension, health and "other" benefits pursuant to the Association contract, but when employed by KC, they were paid only wages without any other benefits. I understand that the wage rate at KC was slightly higher than at EC, but employees were receiving much less in compensation since no contributions were made to any benefit funds.

Regardless of the amount of the wages received by the employees, the violation is the Respondents' making unilateral changes in employees' compensation and their failure to notify the certified Union of those changes, and their failure to offer the Union an opportunity to bargain with them concerning those changes.

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I also find that since KC is the alter ego of ECI, KC, and to the extent that ECI is still operating, they are obligated to comply with the terms of the collective-bargaining agreement that ECI entered into with the Association on May 1, 2007, and which expired on April 30, 2012. The evidence supports a finding that since about June 1, 2012, ECI and KC failed and refused to apply the terms and conditions of that collective-bargaining agreement, including the contractual and fringe benefit provisions therein, which are mandatory subjects of bargaining, and did so without the Union's consent. Accordingly, ECI and KC, as its alter ego, violated Section 8(a)(5) and (1) of the Act by failing and refusing to apply the terms of the collective-bargaining agreement that ECI entered into with the Association, and by failing and refusing to bargain collectively with the Union as the exclusive collective-bargaining representatives of the bargaining unit employees of ECI and KC.

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### Conclusions of Law

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1. The Respondents, Environmental Contractors, Inc., and Kielczewski Corp., are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

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2. Local 78, Laborers International Union of North America, is a labor organization within the meaning of Section 2(5) of the Act.

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3. At all times material herein, Environmental Contractors, Inc., and Kielczewski Corp., have been alter egos and a single employer.

4. By establishing Kielczewski Corp. as a disguised continuation of Environmental Contractors, Inc. for the purpose of evading its responsibilities under the Act, the Respondents have violated Section 8(a)(5) and (1) of the Act.

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5. By refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees of Environmental Contractors, Inc., employed in the following appropriate collective-bargaining unit, the Respondents have violated Section 8(a)(5) and (1) of the Act:

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All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

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6. By changing the wages and benefits of unit employees by reducing such wages and benefits without notice to the Union and without affording it an opportunity to bargain with the Respondents and without first bargaining with the Union to a good-faith impasse, the Respondents violated Section 8(a)(5) and (1) of the Act.

### Remedy

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Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

5 The Respondents will be ordered to recognize and, on request, bargain with Local 78, Laborers International Union of North America, as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document. The Respondents shall also be required to rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after April 23, 2012, and to make the unit employees whole for any loss of earnings and other benefits attributable to its unlawful conduct. The make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6<sup>th</sup> Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

15 The Respondents will be ordered to restore any or all of the terms and conditions of employment of its unit employees as established by the collective-bargaining agreement which expired on April 30, 2012. They shall also be required to make all contractually required contributions to the Union's benefit funds that it failed to make, including any additional amounts due the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and to make the employees whole for any expenses they may have incurred as a result of the Respondents failure to make such payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* mem. 661 F.2d 940 (9<sup>th</sup> Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, *New Horizons for the Retarded*, and *Kentucky River Medical Center*, above.

25 The Respondents additionally shall be ordered to (1) compensate the unit employees for any adverse income tax consequences of receiving their backpay in one lump sum and (2) file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters, as set forth in *Lalino Express, Inc.*, 359 NLRB No. 44 (2012).

30 Where employers, as here, have failed and refused to bargain in good faith with a certified union, the Board will ensure that such a union has at least 1 year of good faith bargaining during which its majority status cannot be questioned by extending the certification year. *Mar-Jac Poultry Co.* 136 NLRB 785 (1962). Under the circumstances here, I recommend that the 1-year extension shall commence to run from the date when good faith bargaining begins.

35 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>10</sup>

40 ORDER

The Respondents Environmental Contractors, Inc., and Kielczewski Corp, West Orange, New Jersey, their officers, agents, successors, and assigns, shall

- 45 1. Cease and desist from

50 <sup>10</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Refusing to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of their employees in the following appropriate bargaining unit:

5 All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

10 (b) Making unilateral changes to the terms and conditions of employment of their bargaining unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

15 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and continue to recognize the Union as the certified exclusive agent of their employees in the unit described below for one year commencing on the date good faith bargain begins with the Union.

25 (b) Rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after April 23, 2012, and make the unit employees whole for any loss of earnings and other benefits attributable to the unilateral changes they have made.

30 (c) At the Union's request, restore any or all of the terms and conditions of employment of unit employees as established by the collective-bargaining agreement which expired on April 30, 2012.

35 (d) Make their unit employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

40 (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

45 (f) Within 14 days after service by the Region, post at their facility in West Orange, New Jersey, copies in English, Spanish and Polish of the attached notice marked "Appendix."<sup>11</sup>

50 <sup>11</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since June 1, 2012.

Dated, Washington, D.C. January 13, 2014

\_\_\_\_\_  
Steven Davis  
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us 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 refuse to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of our employees in the following appropriate bargaining unit:

All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

WE WILL NOT make unilateral changes to your terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as your exclusive collective-bargaining representative with respect to your wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and WE WILL continue to recognize the Union as your certified exclusive agent for 1 year commencing on the date we begin to bargain in good faith with the Union.

WE WILL rescind, on the Union's request, any or all of the unilateral changes to your terms and conditions of employment made on or after June 1, 2012, and make you whole for any loss of earnings and other benefits attributable to the unilateral changes we have made.

WE WILL at the Union's request, restore any or all of your terms and conditions of employment as established by the collective-bargaining agreement which expired on April 30, 2012.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of our discrimination against you.

ENVIRONMENTAL CONTRACTORS, INC., AND KIELCZEWSKI  
CORP., ALTER EGOS AND A SINGLE EMPLOYER

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

20 Washington Place, 5th Floor

Newark, New Jersey 07102-3110

Hours: 8:30 a.m. to 5 p.m.

973-645-2100.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 30 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 973-645-3784

West Orange, NJ

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ENVIRONMENTAL CONTRACTORS, INC.,  
AND KIELCZEWSKI CORP., ALTER EGOS  
AND A SINGLE EMPLOYER

and

Case 22-CA-089865

LOCAL 78, LABORER'S INTERNATIONAL  
UNION OF NORTH AMERICA

**ORDER**

On January 13, 2014, Administrative Law Judge Steven Davis of the National Labor Relations Board issued his Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. The Administrative Law Judge found that the Respondent has engaged in certain unfair labor practices, and recommended that it take specific action to remedy such unfair labor practices.

No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired;

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, the Board adopts the findings and conclusions of the Administrative Law Judge as contained in his Decision, and orders that the Respondent, Environmental Contractors, Inc., and Kielczewski Corp., alter egos and a single employer, their officers, agents, successors, and assigns, shall take the action set forth in the recommended Order of the Administrative Law Judge.

Dated, Washington, D.C., February 27, 2014.

By direction of the Board:

/s/Roxanne L. Rothschild

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Associate Executive Secretary

June 16, 2014

ACO-093

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

ENVIRONMENTAL CONTRACTORS, INC.  
AND KIELCZEWSKI CORP., ALTER EGOS  
AND A SINGLE EMPLOYER

Respondent

No. 14-2815

Board Case No.:  
22-CA-089865

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Before: RENDELL, FISHER and GREENAWAY, Jr., Circuit Judges

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Environmental Contractors, Inc. and Kielczewski Corp., alter egos and a single employer, its officers, agents, successors, and assigns, enforcing its order dated February 27, 2014, in Case No. 22-CA-089865, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent Environmental Contractors, Inc. and Kielczewski Corp., alter egos and a single employer, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT

s/ Joseph A. Greenaway, Jr.

Circuit Judge



Certified to be a true copy and issued in lieu  
of a formal mandate on July 3, 2014

Teste: Marcia M. Waldron

Clerk, U.S. Court of Appeals for the Third Circuit

DATED: July 3, 2014

PDB/cc: All Counsel of Record

**NATIONAL LABOR RELATIONS BOARD**

v.

**ENVIRONMENTAL CONTRACTORS, INC. AND KIELCZEWSKI CORP.,  
ALTER EGOS AND A SINGLE EMPLOYER**

**ORDER**

**Environmental Contractors, Inc., and Kielczewski Corp, West Orange, New Jersey, their officers, agents, successors, and assigns, shall**

**1. Cease and desist from**

- (a) Refusing to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of their employees in the following appropriate bargaining unit:**

**All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.**

- (b) Making unilateral changes to the terms and conditions of employment of their bargaining unit employees.**
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.**

**2. Take the following affirmative action necessary to effectuate the policies of the Act.**

- (a) Recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and continue to recognize the Union as the certified exclusive agent of their**

employees in the unit described below for one year commencing on the date good faith bargain begins with the Union.

- (b) Rescind, on the Union's request, any or all of the unilateral changes to the unit employees' terms and conditions of employment made on or after April 23, 2012, and make the unit employees whole for any loss of earnings and other benefits attributable to the unilateral changes they have made.
- (c) At the Union's request, restore any or all of the terms and conditions of employment of unit employees as established by the collective-bargaining agreement which expired on April 30, 2012.
- (d) Make their unit employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at their facility in West Orange, New Jersey, copies in English, Spanish and Polish of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since June 1, 2012.

**APPENDIX**

**NOTICE TO EMPLOYEES**

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us 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** refuse to recognize and bargain in good faith with Local 78, Laborers International Union of North America, as the exclusive collective bargaining representative of our employees in the following appropriate bargaining unit:

All full-time and regular part-time building and construction laborers employed by the Employer in the State of New Jersey but excluding all office clerical employees, managers, guards and supervisors as defined in the Act.

**WE WILL NOT** make unilateral changes to your terms and conditions of employment.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** recognize and upon request, bargain in good faith with Local 78, Laborers International Union of North America as your exclusive collective-bargaining representative with respect to your wages, hours, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed document, and **WE WILL** continue to recognize the Union as your certified

exclusive agent for 1 year commencing on the date we begin to bargain in good faith with the Union.

WE WILL rescind, on the Union's request, any or all of the unilateral changes to your terms and conditions of employment made on or after June 1, 2012, and make you whole for any loss of earnings and other benefits attributable to the unilateral changes we have made.

WE WILL at the Union's request, restore any or all of your terms and conditions of employment as established by the collective-bargaining agreement which expired on April 30, 2012.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of our discrimination against you.

Environmental Contractors, Inc. and Kielczewski Corp., Alter Egos and a Single Employer

(Employer)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

20 Washington Place, 5th Floor  
Newark, New Jersey 07102-3110  
Hours: 8:30 a.m. to 5 p.m.  
973-645-2100.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (973) 645-3784.

**EXHIBIT 3**

**EXHIBIT 3**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation

Cases: 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

and

Local 78, Laborers International Union of  
North America

---

**ANSWER TO ORDER CONSOLIDATING COMPLAINT, COMPLIANCE  
SPECIFICATION AND NOTICE OF HEARING**

BE Construction Corporation ("BE"), by and through its attorneys  
Carkhuff & Radmin, P.C. as and for its Answer to Order Consolidating Complaint  
brought by Local 78, Laborers International Union of North America says as  
follows:

1. (a) Respondent BE is without sufficient information to form an  
Answer to Paragraph 1(a) of the Order Consolidating Complaint, Compliance  
Specification and leave Local 78 and Laborers International Union to its proofs.

(b) Respondent BE is without sufficient information to form an  
Answer to Paragraph 1(b) of the Order Consolidating Complaint, Compliance  
Specification and leave Local 78 and Laborers International Union to its proofs.

(c) Respondent BE is without sufficient information to form an  
Answer to Paragraph 1(c) of the Order Consolidating Complaint, Compliance  
Specification and leave Local 78 and Laborers International Union to its proofs.

2. Respondent BE admits to having an office and place of business in  
West Orange, New Jersey, and have been contractors in the construction industry.

BE does not occupy the same space at the West Orange premises as do Respondents, ECI and Kielczewski Corp.

3. Respondent BE denies the allegations set forth in Paragraph 3 of the Order Consolidating Complaint, Compliance Specification.

4. Respondent BE denies the allegations set forth in Paragraph 4 of the Order Consolidating Complaint, Compliance Specification.

5. Respondent BE denies the allegations set forth in Paragraph 5 of the Order Consolidating Complaint, Compliance Specification.

6. Respondent BE denies the allegations set forth in Paragraph 6 of the Order Consolidating Complaint, Compliance Specification.

7. Respondent BE denies the allegations set forth in Paragraph 7 of the Order Consolidating Complaint, Compliance Specification.

8. Respondent BE denies the allegations set forth in Paragraph 8 of the Order Consolidating Complaint, Compliance Specification.

9. Respondent BE is without sufficient information to form an Answer to Paragraph 9 (insofar as it has no knowledge of the value of the services of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

10. Respondent BE is without sufficient information to form an Answer to Paragraph 10 (insofar as BE is unaware of those employees of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

11. Respondent BE is without sufficient information to form an Answer to Paragraph 11 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

12. Respondent BE is without sufficient information to form an Answer to Paragraph 12 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

13. Respondent BE is without sufficient information to form an Answer to Paragraph 13 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

14. Respondent BE is without sufficient information to form an Answer to Paragraph 14 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

15. Respondent BE is without sufficient information to form an Answer to Paragraph 15 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

16. Respondent BE is without sufficient information to form an Answer to Paragraph 16 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

17. Respondent BE is without sufficient information to form an Answer to Paragraph 17 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

18. Respondent BE is without sufficient information to form an Answer to Paragraph 18 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

19. Respondent BE is without sufficient information to form an Answer to Paragraph 19 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 19.

20. Respondent BE is without sufficient information to form an Answer to Paragraph 20 of the Order Consolidating Complaint, Compliance

Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 20.

21. Respondent BE is without sufficient information to form an Answer to Paragraph 21 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 21.

22. Respondent BE is without sufficient information to form an Answer to Paragraph 22 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 22.

23. Respondent BE is without sufficient information to form an Answer to Paragraph 23 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

24. Respondent BE is without sufficient information to form an Answer to Paragraph 24 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

25. Respondent BE denies the allegations set forth in Paragraph 25 of the Order Consolidating Complaint, Compliance Specification.

26. Respondent BE denies the allegations set forth in Paragraph 26 of the Order Consolidating Complaint, Compliance Specification.

27. Respondent BE denies the allegations set forth in Paragraph 27 of the Order Consolidating Complaint, Compliance Specification.

28. Respondent BE denies the allegations set forth in Paragraph 28 of the Order Consolidating Complaint, Compliance Specification.

29. Respondent BE denies the allegations set forth in Paragraph 29 of the Order Consolidating Complaint, Compliance Specification.

REMEDY

Insofar as BE has at no time had either a legal or equitable relationship with Respondents ECI and Kielczewski Corp., this matter should be dismissed forthwith.

COMPLIANCE SPECIFICATION

1. BE alleges it is not subject to the National Labor Relations Act, 29 U.S.C. § 151 set seq. ("the Act") and the Rules and Regulations promulgated thereunder, nor sections 102.33 and 102.54(b) thereof and is not a successor corporation of entity to Environmental Contractors, Inc. and Kielczewski Corp. As such the Compliance Specification allegations are inapplicable to BE.

2. BE is a duly organized and operating New Jersey Corporation, having been qualified as a Women's Minority Business under NJSA 17A:46.

3. Barbara Reed is the President and sole shareholder of BE and, having read the Complaint, Answers and compliance specifications set forth herein, certifies that said responses by BE Corporation are accurate and truthful to the best of her knowledge and understanding.

Date: Aug 8, 2017

  
Barbara Reed, President

Carkhuff & Radmin, P.C.  
Attorneys for BE Construction Corp.

Date: 8/14/17

  
Walter H. Carkhuff  
NJ Bar 268861971-NJ

**EXHIBIT 4**

**EXHIBIT 4**



United States Government

**NATIONAL LABOR RELATIONS BOARD**

Region 22

20 Washington Place - 5th Floor

Newark, NJ 07102

December 1, 2017

Via Electronic and U.S. Mail:

Waldo H. Carkhuff, Esq.  
Carkhuff & Radmin, PC  
598-600 Somerset Street  
North Plainfield, NJ 07060

Re: Environmental Contractors, Inc.,  
Kielczewski Corp., and their alter ego, single  
employer and/or successor, BE  
Construction Corp.  
Cases 22-CA-089865, et al.

Dear Mr. Carkhuff:

Thank you for sending a draft of an Amended Answer to the Order Consolidating Complaint, Compliance Specification and Notice of Hearing in this matter. The amendments you propose to Answer the Complaint allegations address the issues which we discussed. Thank for limiting the issues to be litigated to those that are actually in contention.

With respect to your Answer to the Compliance Specification, please be advised that your Answer is defective pursuant to Section 102.56(b) of the NLRB's Rules and Regulations. In that regard, Section 102.56(b), "*Contents of answer to specification*" provides that: "The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures."

In your Answer to the Compliance Specification you failed to respond with specificity to the allegations in the Specification, including those concerning the back pay

and other amounts currently owing and the premises on which these amounts are based. Moreover, you failed to provide alternative calculations. Thus in your Answer of August 8, 2017 you failed to address the allegations in the Compliance Specification but only generally stated that BE "is not subject to the National Labor Relations Act, 29 U.S.C. Section 151 et seq. ('the Act') and the Rules and Regulations promulgated thereunder, nor sections 102.33 and 102.54(b) thereof and is not a successor corporation of entity to Environmental Contractors, Inc. and Kielczewski Corp. As such the Compliance Specification allegations are inapplicable to BE." Additionally, you stated that "BE is a duly organized and operating New Jersey Corporation, having been qualified as a Women's Minority business under NJSA 17A:46." The Answer thus fails to respond with specificity to the Specification allegations and provides no supporting figures.

Additionally, in your proposed Amended Answer you indicated that, in the event your client is found to be subject to the allegations of the Compliance Specification, the Specification computations are "inaccurate and erroneously based insofar as the same are inconsistent with the assumptions (payroll), made and set forth therein, to wit; (a) the commence date is incorrect; (b) back pay, both the period for and projections are inaccurate; (c) BE has not seen nor received records provided by Kielczewski Corp. or ECI, (d) BE is not a successor corporation or entity to Environmental Contractors, Inc. and Kielczewski Corp."

Your proposed Amended Answer to the Specification is also deficient. In this regard, you do not specify how the Specification computations are erroneous or inaccurate or inconsistent with the assumptions made. Nor do you outline how the commence date is inaccurate nor do you provide an alternative date. Additionally, you do not specify how the period for and projections of backpay are inaccurate, nor do you provide specific alternatives. Neither do you posit an alternative to basing the computations on records provided by Kielczewski Corp. or ECI. Again, you provide no figures to support your general denial.

Section 102.56(c) of the NLRB's Rules and Regulations, "*Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*" states in relevant part, "...If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation."

Please be advised that if you fail to file an amended Answer that comports with the requirements of Section 102.56(b) of the Rules and Regulations by the close of business on *December 15, 2017*, the Region will file a motion asking that the allegations not properly answered be deemed admitted without evidence and that you and the above-referenced employers be precluded from offering evidence to controvert them.

Thank you for your kind attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bert Dice-Goldberg". The signature is fluid and cursive, with a prominent initial "B" and "D".

Bert Dice-Goldberg  
Counsel for the General Counsel

**EXHIBIT 5**

**EXHIBIT 5**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation

Cases: 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

and

Local 78, Laborers International Union of  
North America

---

AMENDED ANSWER TO ORDER CONSOLIDATING COMPLAINT,  
COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

BE Construction Corporation ("BE"), by and through its attorneys  
Carkhuff & Radmin, P.C. as and for its Amended Answer to Order Consolidating  
Complaint brought by Local 78, Laborers International Union of North America  
says as follows:

1. (a) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(a) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

(b) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(b) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

(c) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(c) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

2. Respondent BE admits to having an office and place of business in West Orange, New Jersey, and have been contractors in the construction industry. BE does not occupy the same space at the West Orange premises as do Respondents, ECI and Kielczewski Corp.

3. Respondent BE denies the allegations set forth in Paragraph 3 of the Order Consolidating Complaint, Compliance Specification.

4. Respondent BE denies the allegations set forth in Paragraph 4 of the Order Consolidating Complaint, Compliance Specification.

5. Respondent BE denies the allegations set forth in Paragraph 5 of the Order Consolidating Complaint, Compliance Specification.

6. Respondent BE denies the allegations set forth in Paragraph 6 of the Order Consolidating Complaint, Compliance Specification.

7. Respondent BE denies the allegations set forth in Paragraph 7 of the Order Consolidating Complaint, Compliance Specification.

8. Respondent BE denies the allegations set forth in Paragraph 8 of the Order Consolidating Complaint, Compliance Specification.

9. Respondent BE is without sufficient information to form an Answer to Paragraph 9 (insofar as it has no knowledge of the value of the services of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

10. Respondent BE is without sufficient information to form an Answer to Paragraph 10 (insofar as BE is unaware of those employees of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

11. Respondent BE admits the allegations set forth in Paragraph 11 of the Order Consolidating Complaint, Compliance Specification.

12. Respondent BE admits that Section 9(b) of the Act is as stated in the Complaint. Respondent BE denies that Section 9(b) is applicable to it.

13. Respondent BE admits the allegations set forth in Paragraph 13 of the Order Consolidating Complaint, Compliance Specification.

14. Respondent BE is without sufficient information to form an Answer to Paragraph 14 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

15. Respondent BE admits only that on January 13, 2014, Administrative Law Judge Steven Davis, ("ALJ"), issued his Decision and Order in Case 22-CA-08965.

16. Respondent BE repeats its Answer in Paragraph 15.

17. Respondent BE admits the allegations set forth in Paragraph 17 of the Order Consolidating Complaint, Compliance Specification.

18. Respondent BE admits the allegations set forth in Paragraph 18 of the Order Consolidating Complaint, Compliance Specification.

19. Respondent BE is without sufficient information to form an Answer to Paragraph 19 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 19.

20. Respondent BE is without sufficient information to form an Answer to Paragraph 20 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 20.

21. Respondent BE is without sufficient information to form an Answer to Paragraph 21 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs

with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 21.

22. Respondent BE is without sufficient information to form an Answer to Paragraph 22 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 22.

23. Respondent BE is without sufficient information to form an Answer to Paragraph 23 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

24. Respondent BE is without sufficient information to form an Answer to Paragraph 24 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

25. Respondent BE denies the allegations set forth in Paragraph 25 of the Order Consolidating Complaint, Compliance Specification.

26. Respondent BE denies the allegations set forth in Paragraph 26 of the Order Consolidating Complaint, Compliance Specification.

27. Respondent BE denies the allegations set forth in Paragraph 27 of the Order Consolidating Complaint, Compliance Specification.

28. Respondent BE denies the allegations set forth in Paragraph 28 of the Order Consolidating Complaint, Compliance Specification.

29. Respondent BE denies the allegations set forth in Paragraph 29 of the Order Consolidating Complaint, Compliance Specification.

#### REMEDY

Insofar as BE has at no time had either a legal or equitable relationship with Respondents ECI and Kielczewski Corp., this matter should be dismissed forthwith.

## COMPLIANCE SPECIFICATION

1. BE alleges it is not subject to the National Labor Relations Act, 29 U.S.C. § 151 set seq. ("the Act") and the Rules and Regulations promulgated thereunder, nor sections 102.33 and 102.54(b) thereof and is not a successor corporation or entity to Environmental Contractors, Inc. and/or Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or Kielczewski Corp., it does not have now nor did it ever have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premise(s) upon which plaintiff bases the same. BE states that it was incorporated in the State of New Jersey on December 13, 2013, and, as such, any computation based upon an inception/commencement date must be so restructured therein.

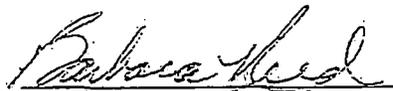
2. In the event BE is, however, is found to be subject to such Compliance Specifications, then computations made in said Complaint are inaccurate and/or erroneously based insofar as these disregard the correct date of inception/commencement and, accordingly, are inconsistent with the assumptions made and set forth therein; to wit; (a) the commence date need be re-established; then reapplied; (b) back pay, both the period for and projections are accordingly, inaccurate; (c) BE has not seen nor received records provided by Kielczewski Corp. or ECI, (d) BE is **not** a successor corporation or entity to Environmental Contractors, Inc. and/or Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or Kielczewski Corp., it does not have now nor did it have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premises upon which plaintiff basis the same. BE states that it was incorporated in the State of New Jersey, on December 13, 2013, and, as such, any

computation based upon an inception commencement date is so restructured therein.

3. BE is a duly organized and operating New Jersey Corporation, having been qualified as a Women's Minority Business under NJSA 17A:46, such substantiating its claim that it is not a successor corporation of entity to Environmental Contractors, Inc. and Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or Kielczewski Corp., it does not have now nor did it ever have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premises upon which plaintiff bases the same. BE states that it was incorporated in the State of New Jersey on December 13, 2013, and, as such any computation based upon an inception/commencement date must be restructured therein.

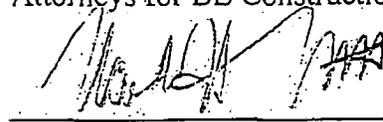
4. Barbara Reed is the President and sole shareholder of BE and, having read the Complaint, Answers and compliance specifications set forth herein, certifies that said responses by BE Corporation are accurate and truthful to the best of her knowledge and understanding.

Date: 12/21/17

  
Barbara Reed, President

Carkhuff & Radmin, P.C.  
Attorneys for BE Construction Corp.

Date: 12/22/17

  
Waldo H. Carkhuff  
NJ Bar 268861971-NJ

**EXHIBIT 6**

**EXHIBIT 6**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation

Cases: 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

and

Local 78, Laborers International Union of  
North America

---

**SECOND AMENDED ANSWER TO ORDER CONSOLIDATING  
COMPLAINT, COMPLIANCE SPECIFICATION AND NOTICE OF  
HEARING**

BE Construction Corporation ("BE"), by and through its attorneys  
Carkhuff & Radmin, P.C. as and for its Second Amended Answer to Order  
Consolidating Complaint brought by Local 78, Laborers International Union of  
North America says as follows:

1. (a) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(a) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

(b) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(b) of  
the Order Consolidating Complaint, Compliance Specification and leave Local 78  
and Laborers International Union to its proofs.

(c) Respondent BE admits to receiving due service of process  
on it; but is without sufficient information to form an Answer to Paragraph 1(c) of

the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

2. Respondent BE admits to having an office and place of business in West Orange, New Jersey, and have been contractors in the construction industry. BE does not occupy the same space at the West Orange premises as do Respondents, ECI and Kielczewski Corp.

3. Respondent BE denies the allegations set forth in Paragraph 3 of the Order Consolidating Complaint, Compliance Specification.

4. Respondent BE denies the allegations set forth in Paragraph 4 of the Order Consolidating Complaint, Compliance Specification.

5. Respondent BE denies the allegations set forth in Paragraph 5 of the Order Consolidating Complaint, Compliance Specification.

6. Respondent BE denies the allegations set forth in Paragraph 6 of the Order Consolidating Complaint, Compliance Specification.

7. Respondent BE denies the allegations set forth in Paragraph 7 of the Order Consolidating Complaint, Compliance Specification.

8. Respondent BE denies the allegations set forth in Paragraph 8 of the Order Consolidating Complaint, Compliance Specification.

9. Respondent BE is without sufficient information to form an Answer to Paragraph 9 (insofar as it has no knowledge of the value of the services of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

10. Respondent BE is without sufficient information to form an Answer to Paragraph 10 (insofar as BE is unaware of those employees of Respondents ECI and Kielczewski Corp.), of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

11. Respondent BE admits the allegations set forth in Paragraph 11 of the Order Consolidating Complaint, Compliance Specification.

12. Respondent BE admits that Section 9(b) of the Act is as stated in the Complaint. Respondent BE denies that Section 9(b) is applicable to it.

13. Respondent BE admits the allegations set forth in Paragraph 13 of the Order Consolidating Complaint, Compliance Specification.

14. Respondent BE is without sufficient information to form an Answer to Paragraph 14 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs.

15. Respondent BE admits only that on January 13, 2014 Administrative Law Judge Steven Davis, ("ALJ"), issued his Decision and Order in Case 22-CA-08965.

16. Respondent BE repeats its Answer in Paragraph 15.

17. Respondent BE admits the allegations set forth in Paragraph 17 of the Order Consolidating Complaint, Compliance Specification.

18. Respondent BE admits the allegations set forth in Paragraph 18 of the Order Consolidating Complaint, Compliance Specification.

19. Respondent BE is without sufficient information to form an Answer to Paragraph 19 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 19.

20. Respondent BE is without sufficient information to form an Answer to Paragraph 20 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 20.

21. Respondent BE is without sufficient information to form an Answer to Paragraph 21 of the Order Consolidating Complaint, Compliance Specification and leave Local 78 and Laborers International Union to its proofs with respect to Respondent's ECI and Kielczewski Corp. BE denies the residual of the allegations in Paragraph 21.

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28. Respondent BE denies the allegations set forth in Paragraph 28 of the Order Consolidating Complaint, Compliance Specification.

29. Respondent BE denies the allegations set forth in Paragraph 29 of the Order Consolidating Complaint, Compliance Specification.

## REMEDY

Insofar as BE has at no time had either a legal or equitable relationship with Respondents ECI and Kielczewski Corp., this matter should be dismissed forthwith.

## COMPLIANCE SPECIFICATION

1. BE alleges it is not subject to the National Labor Relations Act, 29 U.S.C. § 151 set seq. ("the Act") and the Rules and Regulations promulgated thereunder, nor sections 102.33 and 102.54(b) thereof and is not a successor corporation or entity to Environmental Contractors, Inc. and/or Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or Kielczewski Corp., it does not have now nor did it ever have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premise(s) upon which plaintiff bases the same. BE states that it was incorporated in the State of New Jersey on December 13, 2013, and, as such, any computation based upon an inception/commencement date must be so restructured therein. Furthermore, these computations are based upon estimates despite the fact that Respondent has provided exact payroll records of BE post December 13, 2013.

2. In the event BE is, however, is found to be subject to such Compliance Specifications, then computations made in said Complaint are inaccurate and/or erroneously based insofar as these disregard the correct date of inception/commencement and, accordingly, are inconsistent with the assumptions made and set forth therein, to wit: (a) the commence date need be re-established; then reapplied; (b) back pay, both the period for and projections are accordingly, inaccurate; (c) BE has not seen nor received records provided by Kielczewski Corp. or ECI, (d) BE is **not** a successor corporation or entity to Environmental Contractors, Inc. and/or Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or

Kielczewski Corp., it does not have now nor did it have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premises upon which plaintiff bases the same. BE states that it was incorporated in the State of New Jersey, on December 13, 2013, and, as such, any computation based upon an inception commencement date is so restructured therein. Furthermore, these computations are based upon estimates despite the fact that Respondent has provided exact payroll records of BE post December 13, 2013.

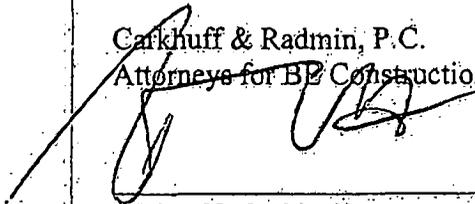
3. BE is a duly organized and operating New Jersey Corporation, having been qualified as a Women's Minority Business under NJSA 17A:46, such substantiating its claim that it is not a successor corporation of entity to Environmental Contractors, Inc. and Kielczewski Corp. BE further alleges that not being a successor corporation or entity of Environmental Contractors, Inc. and/or Kielczewski Corp., it does not have now nor did it ever have the sufficiency of data to either acknowledge nor deny with specificity any allegations in the Specification, including those concerning back pay and other amounts then or currently owing. Accordingly, BE is unable to identify and/or apply with sufficient specificity the computational premises upon which plaintiff bases the same. BE states that it was incorporated in the State of New Jersey on December 13, 2013, and, as such any computation based upon an inception/commencement date must be restructured therein. Furthermore, these computations are based upon estimates despite the fact that Respondent has provided exact payroll records of BE post December 13, 2013.

4. Barbara Reed is the President and sole shareholder of BE and, having read the Complaint, Answers and compliance specifications set forth herein, certifies that said responses by BE Corporation are accurate and truthful to the best of her knowledge and understanding.

Date: 12/29/17

  
Barbara Reed, President

Date: 12/29/17

  
Carkhuff & Radmin, P.C.  
Attorneys for BE Construction Corp.  
Waldo H. Carkhuff  
NJ Bar 268861971-NJ

**EXHIBIT 12**

**EXHIBIT 12**

CARKHUFF & RADMIN, P.C.

ATTORNEYS AT LAW  
598-600 SOMERSET STREET  
NORTH PLAINFIELD, NEW JERSEY 07060

(908) 754-9400  
FAX (908) 753-6562

WALDO H. CARKHUFF\*  
ANDREW I. RADMIN

\*Member N.J., N.Y., FLA., D.C. & TX. BARS

FLORIDA OFFICE

267 BAREFOOT BEACH BLVD.  
SUITE PH2  
BONITA SPRINGS, FLORIDA 34134  
(239) 947-2211

January 5, 2018

FILE NO.

Via Email

Hon. Jeffrey P. Gardner, ALJ  
NY Division of Judges, NLRB

**Re: Environmental Contractors, Inc., Kielczewski Corporation and their Alter Ego, Single Employer and/or successor, BE Construction Corporation and Local 78, Laborers International Union of North America  
Case Nos. 22-CA-089865**

Dear Hon. Jeffrey P. Gardner, ALJ:

First, I would like to thank your Honor for narrowing the issues and prioritizing the parties options during our Tuesday, January 2, 2018, conference call. As a result, we have had meaningful settlement discussions with Bert Dice-Goldberg, Esq. (for General Counsel), NLRB.

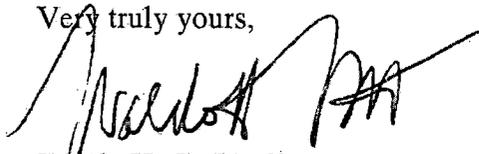
**Unfortunately, the best offer-in-resolution was neither practical nor financially doable for BE Construction Corporation.**

Accordingly, I enclose Statement from our said client directing us to withdraw its Answer(s) in these consolidated matters and by these presents, we advise Your Honor.

This letter, addressed to Your Honor, is in furtherance of the Court's statement (on January 2, 2018), regarding the potential for having (to make) an unnecessary trip to Newark. Our office is closed today due to "severe weather conditions" and I believed it imperative to inform Your Honor and Bert Dice-Goldberg of BE's decision at once and as quickly as possible.

Thank you.

Very truly yours,



Waldo H. Carkhuff

cc.: Bert Dice-Goldberg, Esq. – via email.

**EXHIBIT 13**

**EXHIBIT 13**

To Carkhuff & Radmin, P.C.:

You are hereby directed to advise the National Labor Relations Board ("NLRB"), Associate Chief Administrative Law Judge (NLRB), and counsel for General Counsel, Bert Dice-Goldberg, Esq. that BE Construction Corporation ("BE") has found it practically and financially infeasible to continue with the following litigation; to wit;

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor; BE Construction  
Corporation and counsel for Local 78,  
Laborers International Union of North America...  
Cases: 22-CA-089865, 22-CA-136700, 22-CA-145173, and 22-CA-172957

And by these presents that BE **withdraws its** Answer to the aforementioned Complaint and any other related pleadings.

In addition, BE withdraws its Answer to Complaint and relieves its counsel, Carkhuff & Radmin, P.C., and more specifically, Waldo H. Carkhuff, Esq. from representing it in this matter as well as the following litigation in the United States District Court, District of New Jersey;

New Jersey Building Laborers Statewide Pension Fund  
and the Trustees Thereof,

-v-

Environmental Contractors, Inc.,  
Kielczewski Corp., and BE Construction Corp.  
Case No. 17-CV-3068 (MCA)(MAH)

...and is authorized to advise the Court, accordingly.

Date:

January 5, 2018

BE Construction Corporation

By:

Barbara Reed, President  
Barbara Reed, President

# **EXHIBIT 14**

# **EXHIBIT 14**

**CARKHUFF & RADMIN, P.C.**

ATTORNEYS AT LAW  
598-600 SOMERSET STREET  
NORTH PLAINFIELD, NEW JERSEY 07060

(908) 754-9400  
FAX (908) 753-6562

WALDO H. CARKHUFF\*  
ANDREW I. RADMIN

\*Member N.J., N.Y., FLA., D.C. & TX. BARS

FLORIDA OFFICE

267 BAREFOOT BEACH BLVD.  
SUITE PH2  
BONITA SPRINGS, FLORIDA 34134  
(239) 947-2211

January 8, 2018

FILE NO.

Via Email

Hon. Mindy Landow  
Associate Chief Administrative Law Judge  
National Labor Relations Board  
Division of Judges  
26 Federal Plaza, 17<sup>th</sup> Floor  
New York, New York 10278

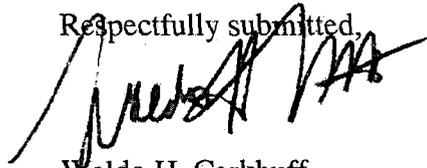
**Re: Environmental Contractors, Inc., Kielczewski Corporation and their Alter  
Ego, Single Employer and/or successor, BE Construction Corporation and  
Local 78, Laborers International Union of North America  
Case Nos. 22-CA-089865**

Dear Hon. Mindy Landow:

Enclosed please find for filing a Motion to Withdraw BE Construction Corporation's Answer in the above-referenced matter. Copies have been served upon the parties on this date.

Thank you.

Respectfully submitted,



Waldo H. Carkhuff

cc.: Bert Dice-Goldberg, Esq. – via email

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation

Cases: 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

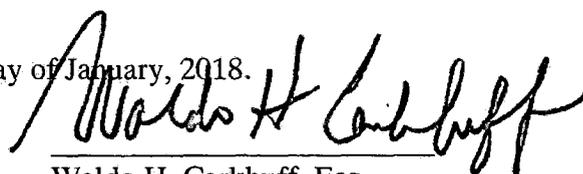
and

Local 78, Laborers International Union of  
North America

**BE CONSTRUCTION CORPORATION'S MOTION TO WITHDRAW ITS ANSWER**

Counsel for Respondent, BE Construction Corporation ("BE"), respectfully requests the Administrative Law Judge enter an Order withdrawing its Second Amended Answer and any other pleadings incident to the Consolidating Complaint and Compliance Specification in the above-captioned matter, under the National Labor Relations Board's Rules and Regulations, herein "the Board's Rules," Section 102.24 and 102.56. Such request is based upon the annexed "statement" made by Barbara Reed, President, BE Construction Corporation.

Dated at North Plainfield, New Jersey, this 8<sup>th</sup> day of January, 2018.



Waldo H. Carkhuff, Esq.  
Carkhuff & Radmin, P.C.  
598-600 Somerset Street  
North Plainfield, NJ 07060  
[carkhuff@aol.com](mailto:carkhuff@aol.com)

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation

Cases: 22-CA-089865  
22-CA-136700  
22-CA-145173  
22-CA-172957

and

Local 78, Laborers International Union of  
North America

**ORDER**

IT IS HEREBY ORDERED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2018 that:

Respondent BE Construction Corporation's Answer is hereby withdrawn.

Date: \_\_\_\_\_

\_\_\_\_\_  
Honorable Mindy Landow

To Carkhuff & Radmin, P.C.:

You are hereby directed to advise the National Labor Relations Board ("NLRB"), Associate Chief Administrative Law Judge (NLRB), and counsel for General Counsel, Bert Dice-Goldberg, Esq. that BE Construction Corporation ("BE") has found it practically and financially infeasible to continue with the following litigation; to wit;

Environmental Contractors, Inc.,  
Kielczewski Corporation and their Alter Ego,  
Single Employer and/or successor, BE Construction  
Corporation and counsel for Local 78,  
Laborers International Union of North America.  
Cases: 22-CA-089865, 22-CA-136700, 22-CA-145173, and 22-CA-172957

And by these presents that BE **withdraws its's Answer** to the aforementioned Complaint and any other related pleadings.

In addition, BE withdraws its Answer to Complaint and relieves its counsel, Carkhuff & Radmin, P.C., and more specifically, Waldo H. Carkhuff, Esq. from representing it in this matter as well as the following litigation in the United States District Court, District of New Jersey;

New Jersey Building Laborers Statewide Pension Fund  
and the Trustees Thereof,

-v-

Environmental Contractors, Inc.,  
Kielczewski Corp., and BE Construction Corp.  
Case No. 17-CV-3068 (MCA)(MAH)

and is authorized to advise the Court, accordingly.

Date:

January 5, 2018

BE Construction Corporation

By:

Barbara Reed, President  
Barbara Reed, President

## CERTIFICATION OF SERVICE

This is to certify that copies of the foregoing Defendant's Motion to Withdraw Answer have been duly served this date as follows:

### ELECTRONIC MAIL

Bert Dice-Goldberg, Esq.  
National Labor Relations Board  
20 Washington Place – 5<sup>th</sup> Floor  
Newark, NJ 07102  
[Bert.dice-goldberg@nldr.gov](mailto:Bert.dice-goldberg@nldr.gov)

### REGULAR MAIL

Radek Korek  
LOCAL 78 LIUNA  
30 Cliff Street  
New York, NY 10038-2825

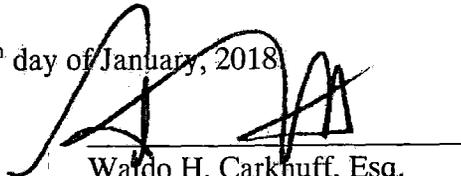
Barbara Reed

Be Construction Corporation  
179 Route 46 West  
Suite 15 #182  
Rockaway, NJ 07866  
[BarbaraReed@BeConstruction.net](mailto:BarbaraReed@BeConstruction.net)  
Phone: 973-669-2900

Seth Ptasiwicz, Esq.

Kroll, Heineman & Carton, LLC  
Metro Corporate Campus I  
99 Wood Avenue South, Suite 307  
Iselin, NJ 08830-2715  
[sptasiwicz@krollfirm.com](mailto:sptasiwicz@krollfirm.com)

Dated at North Plainfield, New Jersey, this 8<sup>th</sup> day of January, 2018.



Wardo H. Carkhuff, Esq.  
Carkhuff & Radmin, P.C.  
598-600 Somerset Street  
North Plainfield, NJ 07060  
[carkhuff@aol.com](mailto:carkhuff@aol.com)

**EXHIBIT 15**

**EXHIBIT 15**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

ENVIRONMENTAL CONTRACTORS, INC.,  
KIELCZEWSKI CORPORATION & THEIR  
ALTER EGO, SINGLE EMPLOYER AND/OR  
SUCCESSOR, BE CONSTRUCTION  
CORPORATION

and

LOCAL 78 LABORERS INTERNATIONAL  
UNION OF NORTH AMERICA

Cases 22-CA-136700  
22-CA-089865  
22-CA-145173  
22-CA-172957

**ORDER POSTPONING HEARING INDEFINITELY**

IT IS ORDERED that the hearing in the above matter set for January 9, 2018 is hereby postponed indefinitely.

Dated: January 9, 2018



---

DAVID E. LEACH III, REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 22  
20 WASHINGTON PL, FL 5  
NEWARK, NJ 07102-3127