

**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

**MOTION TO TRANSFER AND CONTINUE CASE BEFORE THE BOARD AND
MOTION FOR DEFAULT JUDGMENT**

COMES NOW the General Counsel pursuant to Sections 102.20, 102.24, 102.50, 102.54 and 102.56 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, herein "the Board's Rules," and moves that the proceedings in the above-captioned cases be transferred to the National Labor Relations Board, herein "the Board," for a final determination on the basis of the pleadings previously filed. Attached to this Motion as exhibits, and incorporated herein by reference, are copies of the Consolidated Complaint, Compliance Specification and Notice of Hearing and other relevant documents described below.

The General Counsel further moves that, upon transfer of the proceedings to the Board, the Board issue an appropriate Order to Show Cause why this Motion should not be granted and, that unless Respondents show good cause for failing to Answer the Consolidated Complaint, Compliance Specification and Notice of Hearing according to Section 102.20 and 102.56 of the

Board's Rules, all the allegations contained in the Consolidated Complaint, Compliance Specification and Notice of Hearing be deemed to be admitted as true and an Order entered so finding and providing for an appropriate remedy, without the holding of a hearing or taking evidence in support of the allegations in the Consolidated Complaint, Compliance Specification and Notice of Hearing.

In support of this Motion, the General Counsel offers the following:

1. On January 13, 2014 Administrative Law Judge Steven Davis, herein "the ALJ," issued his Decision and Recommended Order in *Environmental Contractors, Inc. and Kielczewski Corp., Alter Egos and a Single Employer*, Case 22-CA-089865, JD(NY)-05-14 (January 13, 2014), finding that Environmental Contractors, Inc., herein "Respondent ECI," and Kielczewski Corp., herein "Respondent Kielczewski," were alter egos and a single employer, that Respondent ECI established Respondent Kielczewski as a disguised continuance for the purpose of evading the National Labor Relations Act, as amended, herein "the Act," and therefore violated the Act, that Respondents ECI and Kielczewski violated the Act by refusing to recognize and bargain with Local 78, Laborers International Union of North America, herein "the Union," and that Respondents ECI and Kielczewski violated the Act by reducing wages and benefits of unit employees without bargaining with the Union. The ALJ directed Respondents ECI and Kielczewski to take certain affirmative action, including recognizing and bargaining with the Union, rescinding their unilateral changes and making whole all employees for loss of earnings and other benefits resulting from their unlawful conduct. A copy of the ALJ's Decision and Recommended Order is attached hereto as Exhibit 1.
2. On February 27, 2014 the Board issued its Decision and Order in *Environmental Contractors, Inc., and Kielczewski Corp., Alter Egos and a Single Employer*, Case 22-CA-

089865 (February 27, 2014), adopting the ALJ's Decision and Recommended Order. A copy of the Board's Order is attached hereto as Exhibit 2.

3. On July 3, 2014 the United States Court of Appeals for the Third Circuit enforced the Board's Decision and Order in full. *NLRB v. Environmental Contractors, Inc. and Kielczewski Corp., Alter Egos and a Single Employer*, No. 14-2815 (3d Cir., July 3, 2014). A copy of the Third Circuit Judgment is attached hereto as Exhibit 3.

4. On July 31, 2017 the Regional Director of Region 22 of the Board, pursuant to the authority dully conferred upon him by the Board, issued a Consolidated Complaint, Compliance Specification and Notice of Hearing, herein "Complaint and Specification," in this matter. In the Complaint and Specification, the Regional Director consolidated four unfair labor practice charges, alleged that a third Respondent, BE Construction Corp., herein "Respondent BE," is an alter ego, single employer and/or successor to Respondents ECI and Kielczewski and sought backpay and benefit contributions for the violations found in the enforced Board Order. A copy of the Complaint and Specification is attached hereto as Exhibit 4. The Complaint and Specification was served on Respondents by certified mail on July 31, 2017. Proof of Service of the Complaint and Specification is attached hereto as Exhibit 5.

5. On August 14, 2017, Respondent BE filed its Answer to the Complaint and Specification. A copy of Respondent BE's Answer is attached hereto as Exhibit 6.¹

6. By letter dated December 1, 2017 the Region informed Counsel for Respondent BE that its Answer to the Compliance Specification portion of the Complaint and Specification did not comply with the Board's Rules and notified Respondent BE that if it did not amend its Answer to comport with the Board's Rules, the Board might find, pursuant to a Motion for Default

¹ By representation of Counsel for Respondent BE, who was also Counsel for the other Respondents, Respondents ECI and Kielczewski are no longer in business. No Answer was filed on behalf of Respondent ECI or Respondent Kielczewski.

Judgment and without taking evidence, that the allegations of the Compliance Specification portion of the Complaint and Specification were true. The December 1, 2017 letter was sent by electronic and United States mail. A copy of the Region's December 1, 2017 letter to Counsel for Respondent BE is attached hereto as Exhibit 7.²

7. Respondent BE filed an Amended Answer to the Complaint and Specification on December 22, 2017. A copy of Respondent BE's Amended Answer is attached hereto as Exhibit 9.

8. On December 29, 2017, Respondent BE filed its Second Amended Answer. Respondent BE's Second Amended Answer is attached hereto as Exhibit 10.

9. As Respondent BE's Second Amended Answer still did not comply with the Board's Rules, on December 29, 2017, the General Counsel filed a Motion to Strike Portions of Respondent's Answer with the Board's Division of Judges. A copy of the General Counsel's Motion to Strike Portions of Respondent's Answer is attached hereto as Exhibit 11.³

10. By letter dated January 5, 2018, sent via electronic mail to ALJ Jeffrey P. Gardner, Counsel for Respondent BE advised the ALJ that he had been directed to withdraw Respondent BE's Answer(s) to the Complaint and Specification. Counsel attached a letter dated January 5, 2018, from Barbara Reed, the President of Respondent BE, withdrawing its Answer to the Complaint and Specification "and any other related pleadings" and relieving Counsel from representing Respondent BE in this matter. Copies of Counsel for Respondent BE's January 5, 2018 letter and Reed's letter of January 5, 2018 letter are attached hereto as Exhibits 12 and 13, respectively.

² By Order dated October 19, 2017 the Regional Director rescheduled the hearing in this matter to January 9, 2018. A copy of the Order Rescheduling Hearing is attached hereto as Exhibit 8.

³ The ALJ did not rule on the General Counsel's Motion.

11. On January 8, 2018, Respondent BE filed a Motion to Withdraw BE Construction Corp.'s Answer with the Associate Chief ALJ in New York. Copies of Respondent BE's cover letter dated January 8, 2018, Motion to Withdraw its Answer, proposed Order, letter of January 5, 2018 from Barbara Reed, which was enclosed with its Motion, and Certification of Service are attached hereto as Exhibit 14.⁴

12. Despite having been advised of the consequences of failure to comply with the Board's Rules, Respondent BE has withdrawn its Answer to the Complaint and Specification.

13. Section 102.20 of the Board's Rules, pertaining to the Answer to Complaint allegations, provides as follows:

The Respondent must, within 14 days from the service of the complaint, file an answer. The Respondent must specifically admit, deny, or explain each of the facts alleged in the complaint, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the Respondent states in the answer that the Respondent is without knowledge, will be deemed to be admitted to be true and will be so found by the Board, unless good cause to the contrary is shown.

14. Section 102.56(a) of the Board's Rules, pertaining to the Answer to a Compliance Specification, provides as follows:

Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

15. Section 102.56 of the Board's Rules further states at paragraph (c):

⁴ By Order dated January 9, 2018, the Regional Director indefinitely postponed the hearing in this matter. The Order of January 9, 2018 is attached hereto as Exhibit 15.

If the Respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the Respondent, find the specification to be true and enter such order as may be appropriate. 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 to deny is not adequately explained, such allegation will be deemed admitted as true, and may be so found by the Board without the taking of evidence supporting such allegation, and the Respondent will be precluded from introducing any evidence controverting the allegation.

16. The Board has found that withdrawal of an Answer has the same effect as failure to file an Answer; the allegations of the pleadings must be considered to be true. *Rock Technologies*, 346 NLRB No. 68, slip op. 1 (2006).

17. Respondents ECI and Kielczewski, having been duly served, have failed to file an Answer to the Complaint and Specification. Respondent BE has withdrawn its Answer; an action the Board treats as if the Answer were never filed. Therefore, pursuant to Rules 102.20 and 102.56(c), all allegations in the Complaint and Specification should be deemed admitted as true and the Board should find that no issue of fact exists warranting or requiring a hearing.

18. Accordingly, the General Counsel respectfully submits that this matter is appropriate for final determination upon default judgment without a hearing and that a final Order should be entered in accordance with the allegations of the Complaint and Specification, without taking evidence.

Dated at Newark, New Jersey this 19th day of January, 2018.

Respectfully submitted,



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