

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D&H DEMOLITION, LLC

and

Cases 5-CA-233552
5-CA-233564

CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11 A/W LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA

**MOTION TO TRANSFER CASE TO THE BOARD
AND FOR SUMMARY JUDGMENT**

Pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations and Statement of Standard Procedure, Series 8 as amended, (the Board's Rules), counsel for the General Counsel respectfully moves to transfer these consolidated cases to the Board and moves for summary judgment. D&H Demolition, LLC (Respondent) has refused to bargain with Construction and Master Laborers' Local Union 11, a/w Laborers' International Union of North America (the Union), in order to test the Board's certification of the Union as the exclusive collective-bargaining representative for certain employees of Respondent. Respondent has similarly refused to provide the Union with information requested by the Union that is presumptively relevant. These cases present no genuine issues as to any material fact, and counsel for the General Counsel requests that the Board make findings of fact and conclusions of law that Respondent has violated Section 8(a)(1) and (5) of the Act, and that the General Counsel is entitled to judgment as a matter of law.

Counsel for the General Counsel respectfully submits this motion on the basis of the following:

1. On September 8, 2016, the Union filed a Petition in Case 5-RC-183865, seeking to represent certain employees of Respondent. See Exhibit 1.¹

2. On September 19, 2016, the Regional Director of Region 5 (the Regional Director) approved a Stipulated Election Agreement, a copy of which is attached as Exhibit 2, scheduling a mail-ballot election between October 13 and November 3, 2016 among the following employees of Respondent (the Unit):

All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by [Respondent] at its jobsites at which [Respondent] performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area; excluding employees at any jobsite who are jointly employed by [Respondent] and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

3. On October 18, 2016, prior to the conclusion of the mail-ballot election, the Union filed an unfair labor practice charge against Respondent and requested that the Regional Director block the petition in Case 5-RC-183865. Upon the Regional Director's determination that the representation proceeding should be blocked pending disposition of the charge, the Region impounded the ballots that it received in the mail prior to the scheduled ballot count. Upon resolution of the unfair labor practice case, and pursuant to a stipulation approved by the Regional Director on April 25, 2017, the parties agreed to set aside the October 13 to November 3, 2016 election and re-run the election at a date, time, and place to be determined by the

¹ Counsel for the General Counsel respectfully requests that the Board take official notice of the entire record in Case 5-RC-183865, as defined in Section 102.68 and 102.69(d) of the Board's Rules. See *Delek Refining, Ltd.*, 363 NLRB No. 41, slip op. at 1 (2015).

Regional Director. See Exhibit 3.² The re-run mail ballot election was held between February 14 and March 7, 2018, as indicated on the Notice of Election attached as Exhibit 4.³

4. On March 7, 2018, the Region issued to the parties a Tally of Ballots showing that, of approximately 23 eligible voters, no votes were cast either for or against the Petitioner, and that there were 12 challenged ballots, which were sufficient in number to affect the results of the election. See Exhibit 5. The Region issued a Revised Tally of Ballots on April 6, 2018, reflecting the parties' agreement to sustain one of the challenges. See Exhibit 6.

5. On April 9, 2018, the Acting Regional Director issued an Order Directing Hearing on the eleven remaining challenged ballots. See Exhibit 7.

6. On April 24 and 25, 2018, a Hearing Officer of the Board held a hearing concerning the challenged ballots. On May 10, 2018, the Hearing Officer issued a Report on Challenges, a copy of which is attached as Exhibit 8, recommending that the challenges to two of the ballots be overruled.

7. On May 24, 2018, Respondent filed exceptions to certain of the Hearing Officer's recommendations, along with a supporting brief, contending that the Hearing Officer erred in overruling the challenges to the two ballots. See Exhibit 9.

² As described in paragraph 6 of the stipulation attached as Exhibit 3, the parties concurrently executed an informal settlement agreement in the unfair labor practice case, which the Regional Director also approved on April 25, 2017.

³ After determining that Respondent had complied with its remedial obligations in the unfair labor practice case, the Regional Director initially scheduled the re-run mail ballot election for January 19, 2018. Due to a partial shutdown of the federal government, the Acting Regional Director canceled the January 19 election. Upon the re-opening of the agency at the end of the shutdown, the Acting Regional Director scheduled the mail ballot election for February 14, 2018.

8. On August 13, 2018, the Acting Regional Director issued a Decision and Direction on Challenges, a copy of which is attached as Exhibit 10. The Acting Regional Director sustained one of the two challenges, and directed that the other challenged ballot be opened and counted.

9. On September 10, 2018, a Second Revised Tally of Ballots was issued to the parties, showing that the single challenged ballot counted was cast for the Union, and that zero votes had been cast against the Union. See Exhibit 11.

10. On September 18, 2018, the Acting Regional Director issued a Certification of Representative, certifying the Union as the exclusive collective-bargaining representative of the employees in the Unit. See Exhibit 12.

11. On September 24, 2018, Respondent filed a request for review of the Acting Regional Director's August 13, 2018 Decision and Direction on Challenges. See Exhibit 13. On October 9, 2018, the Union filed an Opposition to Respondent's Request for Review. See Exhibit 14.

12. By letter dated December 10, 2018, addressed to counsel for Respondent, the Union requested that Respondent bargain collectively with the Union about terms and conditions of employment of the Unit. See Exhibit 15.

13. By the same December 10, 2018 letter described above in paragraph 12, the Union also requested that Respondent furnish the following information, "insofar as responsive materials relate to the bargaining unit of employees for whom [the Union] is the certified exclusive representative pursuant to the NLRB proceeding captioned under Case No. 05-RC-183865:"

- a. any written job descriptions for the positions within the bargaining unit;
- b. any written training materials related to the positions within the bargaining unit;
- c. a copy of all employee policies, handbooks, manuals, safety guidelines, or written work rules currently applicable to bargaining unit employees;

- d. any documents that set out the regular work hours for employees within the bargaining unit;
- e. a roster of all full-time and regular part-time bargaining unit employees, including all employees listed on the Voter Eligibility List that [Respondent] submitted in Case 5-RC-183865, that includes their date of hire and current or most recent rate of pay;
- f. a copy of the summary plan description and summary of benefits for any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate;
- g. a statement of the monthly premium that a bargaining unit employee is responsible for paying either self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate;
- h. a statement of the monthly premium that the employer is responsible for paying for an employee with self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate;
- i. a copy of the summary plan description for any 401(k) or other form of retirement benefit plan(s) for which bargaining unit employees are eligible to participate; and
- j. a description of any other benefits that Respondent provides to employees, including but not limited to paid vacation, sick days, or holidays, uniforms, gloves, personal protective equipment, access to cleaning products, and job training.

See Exhibit 15.

14. By letter dated December 11, 2018, Respondent refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. See Exhibit 16.

15. On December 21, 2018, the Union filed a charge in Case 5-CA-233552, alleging that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by refusing to recognize or bargain with the Union. See Exhibit 17. The charge was served on Respondent by U.S. mail on January 4, 2019. See Exhibit 18.

16. On December 21, 2019, the Union filed a charge in Case 5-CA-233564, alleging that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act by refusing to provide relevant information to the Union. See Exhibit 19. The charge was served on Respondent on January 7, 2019. See Exhibit 20.

17. On January 9, 2019, the Board issued an Order denying Respondent's September 24, 2018 Request for Review, on the basis that it raised no substantial issues warranting review. See Exhibit 21.

18. On February 22, 2019, the Acting Regional Director issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing ("the Complaint") alleging in pertinent part that: (a) since about December 11, 2018, Respondent has failed and refused to recognize and bargain with the Union as the collective-bargaining representative of the Unit for which the Union is certified; and (b) since about December 11, 2018, Respondent has failed and refused to furnish the Union with the information described above in paragraph 13. See Exhibit 22. The Complaint was served on Respondent on February 22, 2019. See Exhibit 23.

19. On March 8, 2019, Respondent filed an Answer to the Complaint (Respondent's Answer), a copy of which is attached as Exhibit 24, in which Respondent admitted the following:

(a) the charges in this matter were filed on December 21, 2018, and served on Respondent on January 4 and 7, 2019; (b) the Union is a labor organization within the meaning of Section 2(5) of the Act; (c) the Unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act; (d) on September 18, 2018, the Regional Director certified the Union as the exclusive collective-bargaining representative of the Unit, pursuant to a representation election; (e) on September 24, 2018, Respondent filed a Request for Review of the Acting Regional Director's Decision and Direction on Challenges; (f) on January 9, 2019, the Board denied Respondent's Request for Review; (g) by letter dated December 10, 2018, the Union requested that Respondent bargain collectively with the Union and provide the Union with the information described above in paragraph 13; (h) Respondent notified the Union in writing that Respondent refused to bargain with the Union; (i) Respondent has at all times since December 10, 2018, failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit; and (j) Respondent has at all times since December 10, 2018 failed and refused to furnish the Union with the information described above in paragraph 13. See Exhibit 24. In its Answer, Respondent denied the following: (a) that the Regional Director's certification of the Union was lawful or proper (§ 6); (b) that the Union has at all times been the exclusive collective-bargaining representative of the Unit under Section 9(a) of the Act (§ 6); (c) that Respondent is under any obligation to recognize or bargain with the Union as the exclusive representative of any of Respondent's employees (§ 9); (d) that the information requested by the Union on December 10, 2018 is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the

Unit (§ 11); (e) that Respondent has any obligation to bargain with or provide information to the Union (§ 12); and (f) that Respondent’s conduct violates the Act (§§ 13 and 14). See Exhibit 24.⁴

20. On April 4, 2019, the Acting Regional Director issued an Amendment to the Complaint. See Exhibit 25. The Amendment to the Complaint was served on Respondent the same day. See Exhibit 26.

21. On April 17, Respondent filed an Answer to the Amendment to the Complaint, in which Respondent admits the following: (a) Respondent is a limited liability company with an office and principal place of business in Glen Burnie, Maryland and has been engaged in the business of performing demolition and asbestos removal; (b) in conducting its operations during the 12-month period ending January 31, 2019, Respondent purchased and received at its Glen Burnie facility goods valued in excess of \$50,000 from other enterprises located within Maryland, each of which other enterprises had received these goods directly from points outside Maryland; and (c) during the 12-month period ending January 31, 2019, Respondent has conducted its business operations in Washington, D.C. and the Board exercises plenary jurisdiction over enterprises in Washington, D.C. See Exhibit 27.⁵

⁴ Respondent also denied paragraph 4 of the Complaint, which alleged that Respondent’s Counsel has been an agent of Respondent within the meaning of Section 2(13) of the Act. Respondent’s partial admission to paragraph 8 of the Complaint renders this denial immaterial. See *The George Washington University*, 346 NLRB 155 at fn. 9 (2005) (finding substantially identical denials “do not preclude summary judgment or raise material issues of fact warranting a hearing because the Respondent admits in . . . its answer that it has refused to bargain with the Union.”).

⁵ While Respondent’s Answer to the Amendment to the Complaint neither admits nor denies the legal conclusion alleged in paragraph 2(d) of that Amendment, that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, its admissions to the facts alleged in paragraphs 2(a)–2(c) are sufficient grounds for the Board assert jurisdiction. See, e.g., *Spruce Company*, 321 NLRB 919, 919 and fn. 2 (finding that the respondent’s admission to underlying commerce facts “clearly establishes that the Respondent is

22. Respondent's Answers fail to raise any genuine issues of material fact, as Respondent admits that (a) Respondent has failed and refused to bargain with the Union on request; (b) the Union requested the information described above in Paragraph 13; and (c) Respondent has refused to provide the requested information.

23. Respondent's Answers fail to present any evidence or assert any issues in support of its defense to the Complaint, and at most merely make implicit reference to the issues Respondent presented in the representation proceedings in Case 5-RC-183865.⁶

24. Where, as in this matter, a party refuses to meet and bargain following certification by the Board, it is the Board's policy that, absent newly discovered or previously unavailable evidence or special circumstances, the party may not re-litigate in an unfair labor practice proceeding issues that were, or could have been, litigated in a prior representation proceeding.

Westinghouse Broadcasting Company, Inc., 218 NLRB 693, 694 (1975); *Keco Industries, Inc.*, 191 NLRB 257, 258 and fn. 3 (1971). See also *Wolf Creek Nuclear Operating Corp.*, 365 NLRB No. 55, slip op. at fn. 1 (2017) ("Sec. 102.67(g) [of the Board's Rules] provides that. . . the denial of a request for review will have preclusive effect in a subsequent unfair labor practice proceeding." (citation omitted)).⁷ Respondent does not argue here that there is any newly discovered or previously unavailable evidence, or that this case presents any special

engaged in commerce within the meaning of the Act.") (citing *Siemons Mailing Service*, 122 NLRB 81 (1959)).

⁶ Respondent denies in its Answer that certification of the Union "was lawful or proper" and that it "has any obligation" to bargain, recognize, or provide information to the Union, but sets forth no specific reasons or arguments in support of these denials.

⁷ Section 102.67(g) of the Board's Rules specifically states that "[d]enial of a request for review shall constitute an affirmation of the Regional Director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding."

circumstances. Accordingly, counsel for the General Counsel requests that the Board, upon transfer of this matter to the Board, strike the defenses set forth in paragraphs 6 and 9 of Respondent's Answer or, alternatively, disregard those defenses.

25. Notwithstanding Respondent's unsupported denial that the information requested by the Union was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit, the Board can determine the relevance of the Union's request solely on the basis of the Union's December 10 letter, without any need for an evidentiary hearing. It is well-established that an employer has an obligation to furnish a union, on request, with information that is relevant and necessary for it to perform its role as the exclusive collective-bargaining representative of unit employees. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–36 (1967). It is similarly well-established that information concerning terms and conditions of employment of bargaining unit employees is presumptively relevant and must be provided upon request. See, e.g., *Diamond Trucking, Inc.*, 365 NLRB No. 64, slip op. at 2 (2017); *Puna Geothermal Venture*, 362 NLRB 1087, 1088 (2015). Here, the information described above in paragraph 13(a) through 13(i) explicitly indicates that the Union seeks information related to unit employees' working conditions. While the information described above in paragraph 13(j) requests information regarding benefits Respondent provides "to employees," the Union limited its entire request "insofar as responsive materials relate to the [Unit]." See Exhibit 15. Thus, the information described above in paragraph 13 is on its face presumptively relevant and Respondent's denial does not raise a genuine issue of material fact requiring a hearing. See, e.g., *Grand Court-Adrian Assoc.*, 331 NLRB 806 (2000). Accordingly, counsel for the General

Counsel requests that the Board, upon transfer of this matter to itself, strike the defenses set forth in paragraphs 11 and 12 of Respondent's Answer or, alternatively, disregard those defenses.

26. Because no genuine issue of material fact exists in this case, and because Respondent has not shown that newly discovered relevant evidence is now available, the Board should transfer this case and continue the proceedings before it, deem the allegations set forth in the Complaint, as amended, to be true without receiving evidence, grant summary judgment, and issue a Decision and Order. Counsel for the General Counsel respectfully requests that the Board make its findings of fact based on the allegations in the Complaint, as amended; conclude that as a matter of law Respondent has violated Section 8(a)(1) and (5) of the Act as alleged; and order an appropriate remedy, including an order that the initial certification year shall be deemed to begin on the date Respondent begins bargaining in good faith with the Union. *Campbell Soup Company*, 224 NLRB 13, 15 (1976) (citing *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962)). Counsel further requests that all notices ordered by the Board in this case be posted in Spanish and in English.

Dated at Baltimore, Maryland this 29th day of April 2019.

Respectfully submitted,

/s/ Andrew Andela

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2019, copies of this Motion to Transfer Proceedings to the Board and for Summary Judgment were served on the following individuals by e-mail:

Edward R. Noonan, Esq.
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Washington, DC 20006

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Construction and Master Laborers' Local 11
5201 1st Place, NE
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/s/ Andrew Andela
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APPENDIX: LIST OF EXHIBITS

Exhibit 1	Representation Petition filed September 8, 2016.
Exhibit 2	September 16, 2016 Stipulated Election Agreement
Exhibit 3	April 25, 2017 stipulation agreeing to re-run election
Exhibit 4	Notice of Election to employees in re-run election
Exhibit 5	Tally of Ballots
Exhibit 6	Revised Tally of Ballots
Exhibit 7	Order Directing Hearing on Challenged Ballots
Exhibit 8	Hearing Officer's Report on Challenged Ballots
Exhibit 9	Respondent's Exceptions to the Hearing Officer's Report
Exhibit 10	Decision and Direction on Challenged Ballots
Exhibit 11	Second Revised Tally of Ballots
Exhibit 12	Certification of Representative
Exhibit 13	Respondent's Request for Review of Decision and Direction on Challenged Ballots
Exhibit 14	Union's Opposition to Respondent's Request for Review
Exhibit 15	Union letter to Respondent requesting bargaining and information, dated December 10, 2018
Exhibit 16	Respondent letter to Union refusing to recognize or bargain, dated December 11, 2018
Exhibit 17	Charge in Case 5-CA-233552, dated December 21, 2018
Exhibit 18	Service of Charge in Case 5-CA-233552, dated January 4, 2019
Exhibit 19	Charge in Case 5-CA-233564, dated December 21, 2018
Exhibit 20	Service of Charge in Case 5-CA-233564, dated January 7, 2019

Exhibit 21	Board Order denying Respondent's Request for Review
Exhibit 22	Consolidated Complaint and Notice of Hearing, issued February 22, 2019
Exhibit 23	Service of Consolidated Complaint and Notice of Hearing, dated February 22, 2019
Exhibit 24	Respondent's Answer to Consolidated Complaint
Exhibit 25	Amendment to the Consolidated Complaint, issued April 4, 2019
Exhibit 26	Service of Amendment to the Consolidated Complaint, dated April 4, 2019
Exhibit 27	Respondent's Answer to the Amendment to the Consolidated Complaint

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 05-RC-183865	Date Filed 09/08/2016

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer
D&H Demolition, LLC

2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)
7305 Gavin St. New Carrollton, MD 20764

3a. Employer Representative - Name and Title
Manuel Espinal

3b. Address (If same as 2b - state same)
same

3c. Tel. No.
445.938.4725

3d. Cell No.
445.938.4725

3e. Fax No.

3f. E-Mail Address
manuelhdemo@gmail.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.)
Demolition Contractor

4b. Principal product or service
construction and demolition services

5a. City and State where unit is located:
Northern Virginia, DC Metro

5b. Description of Unit Involved
Included: All laborers, including demolition and asbestos removal workers, that are directly employed by D&H Demolition LLC
Excluded: any employee who is jointly employed with another entity, office clericals, confidential and management employees, guards, and supervisors

6a. No. of Employees in Unit:
12

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes No

Check One: **7a. Request for recognition as Bargaining Representative was made on (Date) 9.5.16 and Employer declined recognition on or about No reply (Date) (If no reply received, so state).**
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state).
NONE

8b. Address

8c. Tel No.

8d. Cell No.

8e. Fax No.

8f. E-Mail Address

8g. Affiliation, if any

8h. Date of Recognition or Certification

8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)

9. Is there now a strike or picketing at the Employer's establishment(s) involved? _____ If so, approximately how many employees are participating? _____
(Name of labor organization) _____ has picketed the Employer since (Month, Day, Year) _____.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name
NONE

10b. Address

10c. Tel. No.

10d. Cell No.

10e. Fax No.

10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: Manual Mail Mixed Manual/Mail

11b. Election Date(s):
October 7, 2016

11c. Election Time(s):
three weeks

11d. Election Location(s):
various

12a. Full Name of Petitioner (including local name and number)
Construction and Master Laborers' Local Union 11

12b. Address (street and number, city, state, and ZIP code)
3690 Wheeler Ave., Unit 100, Alexandria VA 22304

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state)
Laborers' International Union of North America

12d. Tel No.
703.504.6166

12e. Cell No.

12f. Fax No.
703.504.6168

12g. E-Mail Address

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title
Brian Petruska

13b. Address (street and number, city, state, and ZIP code)
11951 Freedom Dr. Rm. 310, Reston, VA 20190

13c. Tel No.
703.504.6166

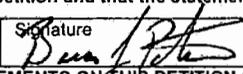
13d. Cell No.

13e. Fax No.
703.860.1865

13f. E-Mail Address
bpetruska@maliona.org

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)
Brian Petruska

Signature


Title
Counsel

Date
September 8, 2016

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

D & H Demolition, LLC

Case 05-RC-183865

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, D & H Demolition, LLC, a limited liability corporation with an office and principle place of business in Glen Burnie, Maryland, Employer's facility, is engaged in the business of performing demolition and asbestos removal. During the 12-month period ending August 31, 2016, the Employer, in conducting its operations described herein, purchased and received at its Glen Burnie, Maryland facility and Maryland jobsites goods valued in excess of \$50,000 directly from points outside the State of Maryland.

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Thursday, October 13, 2016, ballots will be mailed to voters from the National Labor Relations Board, Region 05 Resident Office, 1015 Half Street SE, Washington, DC 20570-0001. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, October 20, 2016, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Resident Office at (202)208-3000 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 05 Resident Office on Thursday, November 3, 2016, at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 05 Resident Office prior to the counting of the ballots.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area; excluding employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees,

Initials: _____

confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending September 16, 2016**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by Construction and Master Laborers' Local Union 11, affiliated with Laborers' International Union of North America?" The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the

Initials: _____

Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: David Henriquez, Operations Manager; 889 Airport Park Road, Suite C, Glen Burnie, Maryland, 21061; david.dhdemo@gmail.com; facsimile number: 410-761-0018.

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

D & H DEMOLITION, LLC

(Employer)

**CONSTRUCTION AND MASTER
LABORERS' LOCAL UNION 11,
AFFILIATED WITH LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA**

(Petitioner)

By /s/ Edward R. Noonan 9/16/16
(Name) (Date)

By /s/ Brian J. Petruska 9/16/16
(Name) (Date)

Recommended: /s/ Ximena P. Molano 9/16/16
XIMENA P. MOLANO, Field Examiner
(Date)

Date approved: September 19, 2016

/s/ Charles L. Posner

**Regional Director, Region 05
National Labor Relations Board**

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D&H Demolition, LLC

Cases 05-CA-186463 and 05-RC-183865

and

**Construction and Master Laborers' Local
Union 11, affiliated with Laborers'
International Union of North America**

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by the undersigned parties to this proceeding that:

1. Pursuant to a Stipulated Election Agreement approved by the Regional Director, Region 5, on September 19, 2016, an election was conducted in this matter via United States mail, with a count scheduled for November 3, 2016. The appropriate collective bargaining unit consisted of:

Included: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area.

Excluded: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

2. On October 18, 2016, the Petitioner Union filed a charge in Case 05-CA-186463 and a Request to Block the Petition in Case 05-RC-183865.

3. On November 3, 2016, the ballots Region 5 received by United States mail were impounded by the Region based upon a determination by the Regional Director that the ballots should be impounded pending the investigation of Case 05-CA-186463.

4. **IT IS HEREBY STIPULATED AND AGREED** by and between the undersigned parties that the election conducted in Case 05-RC-183865 described above in paragraph 3, should be set aside and a second election conducted without regard to the merits of the blocking charge.

5. With respect to the election described above in paragraph 3, in Case 05-RC-183865 and impounded ballots, the Employer and the Union hereby waive the right to: (a) opening the mail ballots received by the Region 5 office; (b) submit any objections or further evidence pertaining to the election; (c) a Report to the Board on any objections; (d) a Report and Recommendation on any said objections; (e) except to any such Report and Recommendation on said objections; (f) a Decision and Order by the Board on said objections; (g) all other proceedings concerning said election to which they may be entitled under the Act or the Rules and Regulations of the Board.

6. Concurrent with this stipulation, the parties are entering into an informal settlement in Case 05-CA-186463 (the "Informal Settlement").

7. The parties hereby agree that once D&H Demolition, LLC has taken all action required by the Informal Settlement and the full period for the notice posting has passed, the Regional Director may proceed to conduct a second election in Case 05-RC-183865 at a date, time, and place to be decided by the Regional Director.

8. Eligible to vote in the election will be the employees employed in the appropriate collective bargaining unit described above. The election date, times, place and payroll period for eligibility will be determined by the Regional Director in consultation with the parties and in consideration of the expiration of the Notice posting period described in the Informal Settlement.

9. **IT IS FURTHER AGREED** by the Employer that, as required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and the parties named in this stipulation an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, accompanied by a certificate of service on all parties. To be filed and served, the list must be received by the Regional Director and the parties within two business days upon request of the Regional Director. The letter requesting election eligibility list will designate the appropriate payroll eligibility period as discussed in the immediately preceding paragraph. **The Region will no longer serve the voter list.**

10. **IT IS FURTHER STIPULATED AND AGREED** that the Notice of Election for the rerun election will contain the following language:

The election conducted with a ballot count scheduled for November 3, 2016, was set aside by mutual agreement of the parties, in lieu of litigating allegations of objectionable conduct by the Employer that interfered with the employees' exercise of free and reasoned choice and which the Employer denies. A rerun election will be held in accordance with the terms of this Notice of Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

BED



United States of America
National Labor Relations Board



NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

RERUN OF THE ELECTION HELD ON SEPTEMBER 19, 2016

NOTICE TO ALL VOTERS

The election conducted with a ballot count scheduled for November 3, 2016, was set aside by mutual agreement of the parties, in lieu of litigating allegations of objectionable conduct by the Employer that interfered with the employees' exercise of free and reasoned choice and which the Employer denies. A rerun election was original scheduled for Friday, January 19, 2018, but it had to be rescheduled due to a three-day lapse in Congressional appropriation for the operation of the government that interrupted the Region's administration of that election. A rerun election will be held in accordance with the terms of this Notice of Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Wednesday, February 14, 2018, ballots will be mailed to voters from the National Labor Relations Board, Region 05 Resident Office, 1015 Half Street SE, Washington, DC 20570-0001. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Wednesday, February 21, 2018, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Resident Office at (202)208-3000 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 05 Resident Office on Wednesday, March 7, 2018 at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 05 Resident Office prior to the counting of the ballots.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



United States of America National Labor Relations Board NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

05-RC-183865

N.L.R.B./202-208-3000

05-RC-183865

VOTING UNIT – For Certain Employees of – D & H DEMOLITION, LLC

EMPLOYEES ELIGIBLE TO VOTE: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area who were employed by the Employer during the payroll period ending December 30, 2017.

EMPLOYEES NOT ELIGIBLE TO VOTE: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

DATE, HOURS AND PLACE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Wednesday, February 14, 2018, ballots will be mailed to voters from the National Labor Relations Board, Region 05 Resident Office, 1015 Half Street SE, Washington, DC 20570-0001. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Wednesday, February 21, 2018, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Resident Office at (202)208-3000 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 05 Resident Office on Wednesday, March 7, 2018 at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 05 Resident Office prior to the counting of the ballots.

	UNITED STATES OF AMERICA ESTADOS UNIDOS DE AMERICA National Labor Relations Board Junta Nacional De Relaciones Del Trabajo 05-RC-183865	
OFFICIAL SECRET BALLOT PAPELETA SECRETA OFICIAL For certain employees of Para Ciertos Empleados De D & H DEMOLITION, LLC		
Do you wish to be represented for purposes of collective bargaining by ¿Desea usted estar representado para los fines de negociar colectivamente por CONSTRUCTION AND MASTER LABORERS' LOCAL UNION #1, AFFILIATED WITH LABORERS' INTERNATIONAL UNION OF NORTH AMERICA?		
MARK AN 'X' IN THE SQUARE OF YOUR CHOICE MARQUE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCIÓN		
YES SI <input type="checkbox"/>	NO NO <input type="checkbox"/>	
DO NOT SIGN THIS BALLOT. See enclosed instructions. NO FIRME ESTA PAPELETA. Vea las Instrucciones incluidas.		
<p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p> <p>La Junta Nacional de Relaciones del Trabajo no respalda a ninguna de las opciones en esta elección. Cualquier marca que se pueda ver en cualquier muestra de la papeleta no fue hecha por la Junta Nacional de Relaciones del Trabajo.</p>		

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist a union**
- **Choose representatives to bargain with your employer on your behalf**
- **Act together with other employees for your benefit and protection**
- **Choose not to engage in any of these protected activities**
- **In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).**

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- **Threatening loss of jobs or benefits by an Employer or a Union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election**
- **Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a Union or an Employer to influence their votes**

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (202)208-3000 or visit the NLRB website www.nlr.gov for assistance.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

Date Filed

Sep 8, 2016

Case No. 5-RC-183865

Date Issued 03/07/2018

City Washington

State DC

Type of Election: (Check one:)

(If applicable check either or both:)

- Stipulation (checked)
Board Direction
Consent Agreement
RD Direction Incumbent Union (Code)

- 8(b) (7)
Mail Ballot (checked)

D & H DEMOLITION, LLC Employer
and CONSTRUCTION AND MASTER LABORERS' LOCAL UNION 11, AFFILIATED WITH LABORERS' INTERNATIONAL UNION OF NORTH AMERICA Petitioner

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters 23
2. Number of Void ballots 0
3. Number of Votes cast for PETITIONER 0
4. Number of Votes cast for
5. Number of Votes cast for
6. Number of Votes cast against participating labor organization(s) 0
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 0
8. Number of challenged ballots 12
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 12
10. Challenges are (not) sufficient in number to affect the results of the election.

11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for CONSTRUCTION AND MASTER LABORERS' LOCAL UNION 11, AFFILIATED WITH LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

ACTING For the Regional Director - Region 5

[Signature]

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

For PETITIONER

No REPRESENTATIVE Present

Brian J. Petruska, Counsel

For

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

D & H DEMOLITION, LLC
Employer

and

CONSTRUCTION AND MASTER LABORERS' LOCAL UNION
11, AFFILIATED WITH LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA
Petitioner

Case No. 05-RC-186835

Date Issued 04/06/2018

TYPE OF ELECTION: (Check one:)

- Consent Agreement
- Stipulation
- Board Direction
- RD Direction

(Also check box below where appropriate)

8(b) (7)

REVISED TALLY OF BALLOTS
(Counting of Challenged Ballots)

The undersigned agent of the Regional Director certifies that the results of counting the challenged ballots directed to be counted by the Acting Regional Director on 04/06/2018 and the addition of these ballots to the original Tally of Ballots, executed on 03/07/2018, were as follows:

	Original Tally	Challenged Ballots Counted	Final Tally
Approximate number of eligible voters	23		
Number of Void ballots	0	0	0
Number of Votes cast for <u>PETITIONER</u>	0	0	0
Number of Votes cast for _____	-	-	-
Number of Votes cast for _____	-	-	-
Number of Votes cast against participating labor organization(s)	0	0	0
Number of Valid votes counted	0		0
Number of undetermined challenged ballots	12		11
Number of Valid votes counted plus challenged ballots	12		11
Number of Sustained challenges (<i>voters ineligible</i>)			1

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are ~~(not)~~ sufficient to affect the results of the election. A majority of the valid votes plus challenged ballots as shown in the Final Tally column has ~~(not)~~ been cast for

~~CONSTRUCTION AND MASTER LABORERS' LOCAL UNION 11, AFFILIATED WITH LABORERS' INTERNATIONAL UNION OF NORTH AMERICA~~

Acting
V
For the Regional Director Region 5 /s/ Ximena P. Molano

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that this counting and tabulating, and the compilation of the Final Tally, were fairly and accurately done, and that the results were as indicated above. We also acknowledge service of this Tally.

For EMPLOYER _____
No Representative Present _____

For _____

For PETITIONER _____
No Representative Present _____

For _____

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D & H DEMOLITION, LLC

Employer

and

Case 05-RC-183865

**CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11, AFFILIATED WITH
LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA**

Petitioner

**ORDER DIRECTING HEARING ON CHALLENGED BALLOTS
AND
NOTICE OF HEARING**

Based on a petition filed on September 8, 2016, an election was conducted with a ballot count scheduled for November 3, 2016. By mutual agreement, that election was set aside in lieu of litigating allegations of objectionable conduct by D & H Demolition, LLC (the Employer), and a rerun election was conducted with a ballot count scheduled for March 7, 2018. The election was conducted to determine whether a unit of employees of the Employer wishes to be represented for purposes of collective bargaining by Construction and Master Laborers' Local Union 11, affiliated with Laborers' International Union of North America. That voting unit consists of:

Including: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area who were employed by the Employer during the payroll period ending December 30, 2017.

Excluding: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

The tally of ballots prepared at the conclusion of the election on March 7, 2018 showed that of the approximately 23 of eligible voters, 0 votes were cast for and 0 votes were cast against the Petitioner, with 12 challenged ballots, a number that is sufficient to affect the results of the election.

The parties resolved 1 of the 12 challenged ballots and on April 9, 2018 a revised tally of ballots issued. The revised tally of ballots shows that of the approximately 22 eligible voters, 0 votes were cast for and 0 votes were cast against the Petitioner, with 11 challenged ballots, a number that is sufficient to affect the results of the election.

THE CHALLENGED BALLOTS

The names of the remaining 11 determinative challenged voters, the party who made each challenge and the stated reason for each challenge are as follows:

NAME	CHALLENGED BY	REASON
Olvin Burgos	Board Employer	Not on List <i>Employer Position: Employee quit voluntarily</i>
David Gutierrez	Board Employer	Not on List <i>Employer Position: Does not meet eligibility formula</i>
Silvia Garcia	Board Employer	Not on List <i>Employer Position: Does not meet eligibility formula</i>
Iris Perez	Board Employer	Not on List <i>Employer Position: No record of employee by this name</i>
Nery Vasquez	Board Employer	Not on List <i>Employer Position: Does not meet eligibility formula</i>
Aracelis Cruz	Board Employer	Not on List <i>Employer Position: Does not meet eligibility formula</i>
Ever Flores	Board Employer	Not on List <i>Employer Position: Does not meet eligibility formula</i>
Walter Vasquez	Board Employer	Not on List <i>Employer Position: Does not meet eligibility formula</i>
Herminia Banegas	Board Employer	Not on List <i>Employer Position: Does not meet eligibility formula</i>
Felipa Cardenas	Board Employer	Not on List <i>Employer Position: Does not meet eligibility formula</i>
Carlos Lara	Board Employer	Not on List <i>Employer Position: Employee quit voluntarily</i>

CONCLUSION AND ORDER

I have concluded that the challenged ballots raise substantial and material issues of fact that can best be resolved by hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board’s Rules and Regulations, **IT IS ORDERED** that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the challenged ballots. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations as to the disposition of the challenged ballots.

ORDER SCHEDULING HEARING

YOU ARE HEREBY NOTIFIED that at 9:00 a.m. on **Tuesday, April 24, 2018**, and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at, Bank of America Center, Tower II, 100 South Charles Street, Suite 600, Baltimore, MD 21201-2733, the hearing on challenged ballots as described above will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

Dated: April 9, 2018

/s/ Sean R. Marshall

Sean R. Marshall, Acting Regional Director
National Labor Relations Board, Region 05
Bank of America Center, Tower II
100 S. Charles Street, Ste. 600
Baltimore, MD 21201

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D & H DEMOLITION, LLC

Employer

and

Case 05-RC-183865

**CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11, AFFILIATED WITH
LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA**

Petitioner

**AFFIDAVIT OF SERVICE OF: Order Directing Hearing on Challenged Ballots and
Notice of Hearing, dated April 9, 2018.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on April 9, 2018, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Edward R. Noonan, Esq.
Eckert, Seamans, Cherin & Mellott, LLC
1717 Pennsylvania Avenue N.W., 12th Floor
Washington, DC 20006-3942
enoonan@eckertseamans.com
Fax: (202)659-6699

Mr. Manuel Espinal
D&H Demolition, LLC
889 Airport Park Rd., Ste. C
Glen Burnie, MD 21061-2555
manuel.dhdemo@gmail.com
Fax: (410)761-0024

Brian J. Petruska, Esq.
General Counsel & Administrator
LIUNA Mid-Atlantic Regional Organizing
Coalition
11951 Freedom Drive, Room 310
Reston, VA 20190
bpetruska@maliuna.org
Fax: (703)860-1865

Construction and Master Laborers' Local
Union 11
3690 Wheeler Avenue, Unit 100
Alexandria, VA 22304-6403
Fax: (703)504-6168

April 9, 2018

Date

Waynetta Mitchell, Designated Agent of NLRB

Name

/s/ *Waynetta Mitchell*

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

D&H DEMOLITION, LLC

Employer

and

Case No. 05-RC-183865

CONSTRUCTION AND MASTER
LABORERS' LOCAL UNION 11,
AFFILIATED WITH LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA

Petitioner

Edward R. Noonan, Esq. (Eckert, Seamans, Cherin & Mellott, LLC.),
of Washington, D.C., for the Employer

Brian J. Petruska, Esq. (LIUNA Mid-Atlantic Regional Organizing Coalition),
of Reston, VA, for the Petitioner

HEARING OFFICER'S REPORT AND RECOMMENDATIONS
ON CHALLENGED BALLOTS

Brendan Keough, Esq., Hearing Officer. Upon a petition filed on September 8, 2016 by the Construction and Master Laborers' Local Union 11, affiliated with the Laborers' International Union of North America and pursuant to a stipulated election agreement executed by the parties, a secret-ballot election was held on March 7, 2018 in the following unit:

Including: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area who were employed by the Employer during the payroll period ending December 30, 2017.

Excluding: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

The tally of ballots prepared at the conclusion of the election on March 7, 2018 showed that of the approximately 23 eligible voters, 0 votes were cast for and 0 votes were cast against the Petitioner, with 12 challenged ballots. Subsequent to March 7, 2018 the parties resolved one of the 12 challenged ballots and on April 9, 2018 a revised tally of ballots issued. The revised tally of ballots shows that of the approximately 23 eligible voters, 0 votes were cast for and 0 votes were cast against the Petitioner, with 11 challenged ballots, a number sufficient to affect the results of the election.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the Acting Regional Director, on April 9, 2018, issued an Order Directing Hearing On Challenged Ballots And Notice of Hearing for the purpose of resolving issues raised by the 11 remaining challenged ballots. A hearing was held before me, the undersigned Hearing Officer, in Baltimore, Maryland, on April 24 and 25, 2018.

The Order Directing Hearing On Challenged Ballots And Notice of Hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative. Credibility resolutions are based on my observations of the testimony and demeanor of witnesses and are more fully discussed within the context of my discussion of the challenged ballots related to the witnesses' testimony.

All parties were afforded a full opportunity to be heard, to present evidence, to examine and cross-examine witnesses, and to file briefs, which were fully considered. In support of its challenges, the Employer presented three witnesses. The Petitioner presented one witness in support of its position. At the outset, I stressed that the burden of proof rests on the party seeking to exclude a challenged individual from voting. *Sweetener Supply Corp.*, 349 NLRB 1122 (2007)(citing *Golden Fan Inn*, 281 NLRB 226, 230 fn. 24 (1986)). In this case, that party is the Employer.

ISSUES

The issue regarding nearly all of the contested voters is whether they worked for the Employer a sufficient number of days as a unit employee to be eligible under the *Daniel/Steiny* eligibility formula for construction-industry employees. See *Daniel Construction Co.*, 133

NLRB 264 (1961), as modified at 167 NLRB 1078 (1967); *Steiny & Co.*, 308 NLRB 1323 (1992). For one of the contested voters, the issue is whether he quit voluntarily prior to the completion of the last job for which he was employed with the Employer. *Id.*

SUMMARY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS

On review of the entire record, including my observations of the witnesses appearing before me, I make the following findings of fact, conclusions of law, and recommendations:

- The Employer, by a preponderance of the evidence, established that Olvin Burgos, Silvia Garcia, Iris Perez, Nery Vasquez, Aracelis Cruz, Ever Flores, Walter Vasquez, Felipa Cardenas, and David Gutierrez, lack the requisite number of working days to be eligible to vote according to the *Daniel/Steiny* formula. ***Thus, it is recommended that the challenges to the ballots of Burgos, Garcia, Perez, Vasquez, Cruz, Flores, W. Vasquez, Cardenas, and Gutierrez be sustained.***
- The Employer has failed to establish that Carlos Lara quit voluntarily prior to the completion of the last job for which he was employed by the Employer. ***Therefore, I recommend that the Employer's challenge to Carlos Lara's ballot be overruled and opened, commingled, and counted.***
- The Employer has failed to establish that Herminia Banegas lacks the requisite number of working days to be ineligible to vote according to the *Daniel/Steiny* formula, and stipulated unit. ***I recommend the Employer's challenge to Banegas' ballot be overruled and opened, commingled, and counted.***

Having recommended that nine of the 11 challenged ballots be sustained, the remaining two challenged ballots are sufficient in number to affect the results of the election. ***Therefore, I recommend that the Acting Regional Director open, commingle, and count the ballots of Carlos Lara and Herminia Banegas, and issue a revised tally of ballots.***

PRELIMINARY FACTS

The Employer provides demolition and environmental remediation services, as well as supplying or leasing temporary labor to construction firms performing demolition and environmental remediation services, including asbestos abatement. Over the course of the last two years, the Employer has leased temporary laborers to both construction firms Rath Enterprises (Rath) and Retro Environmental (Retro).¹

¹ At hearing, the parties requested that I take administrative notice of the Regional Director's Decision and Direction of Election in case 05-RC-183442. In that case, the Regional Director noted that the Employer performed its own work as a subcontractor but also "leased" employees to Rath and Retro to work on Rath and Retro jobsites. The Regional Director agreed with the Petitioner and found that the Employer, Rath and Retro were joint employers of the employees on the Rath and Retro sites. For the purposes of the instant case, the parties agree that only the days worked on the Employer's jobsites (not Rath or Retro jobsites) are to be included in the calculations of employees' voting eligibility. According to the parties, the exclusions identified in the stipulated-election agreement specifically

In a given calendar year, the Employer performs approximately 15 demolition and environmental remediation jobs. Typically, the Employer performs its 15 jobs with 12-15 regular employees. According to Hessler Espinal, Operations Manager, none of the 11 contested voters are included within the Employer's 12-15 regular employees. However, the Employer frequently utilizes employees outside of its regular employees to perform work on its jobsites.

Espinal and Margot Aguilar, Espinal's Administrative Assistant, are responsible for collecting and maintaining employee time sheets for any of the Employer's jobsites, or jobsites in which the Employer leased employees to Rath or Retro. Any time an employee arrives to work at a jobsite, the employee is required to sign his/her name on a sign-in-sheet, and sign out on the same sheet at the end of the work day. At the end of the work week the time sheets are sent to the Employer's Glen Burnie, Maryland offices where the sheets are organized and stored by jobsite and year.

Espinal and Aguilar are also responsible for inputting the information from the time sheets into the Employer's payroll system. Prior to July 2017, the Employer had contracted with Wells Fargo to perform payroll function for the Employer. After July 2017, the Employer contracted with ADP to calculate and perform payroll. Both entities calculated and created year end W-2s for any employee that performed work for the Employer in a given calendar year.

In its effort to meet its burden as the challenging party, the Employer relied primarily on the testimony of Espinal and Aguilar regarding their documentary search for time sheets and W-2s for the contested voters for calendar years 2016 and 2017. According to Espinal and Aguilar, if an employee worked for the Employer, or Rath or Retro, in 2016 or 2017, there must be a time sheet corresponding to the day worked by the employee.

THE EMPLOYER ESTABLISHED THAT SEVERAL CHALLENGED VOTERS DID NOT WORK IN 2017, AND THUS ARE INELIGIBLE TO VOTE

Espinal provided credible, largely un rebutted, testimony that the Employer has no 2017 time sheets or W-2s for the following contested voters: Silvia Garcia, Iris Perez, Nery Vaquez, Aracelis Cruz, Ever Flores, Walter Vasquez, Felipa Cardenas, and David Gutierrez.²

According to the *Daniel/Steiny* formula, and the stipulated unit, a challenged voter must have worked at least one day for the Employer in 2017. Having found that the Employer met its burden to establish that Garcia, Perez, Nery Vasquez, Cruz, Flores, Walter Vasquez, Cardenas,

excludes days worked by employees while working for joint employers, Rath and Retro. Where the Employer offered evidence of contested voters' time sheets while working on Rath and Retro jobsites, it was relevant for the purpose of accounting for earnings identified in some of the contested voters W-2s.

² While Gutierrez rebutted Espinal's testimony that Gutierrez did not work for the Employer in 2017, I do not credit Gutierrez's testimony because his testimony was vague and inconsistent. For instance, Gutierrez originally testified that the last time he worked for the Employer was in 2007. Then, after some leading questions by Petitioner's counsel, Gutierrez testified that he had actually worked for the Employer in 2017 and 2018, but couldn't provide sufficient detail regarding the alleged times or jobsites he worked for the Employer in 2017. On cross-examination, Gutierrez admitted that he wasn't sure who he worked for in 2017 since he was leased out to other employers.

and Guterrez, did not work any days for the Employer in 2017, I recommend that the Employer's challenge to the aforementioned voters' ballots be sustained.³

THE EMPLOYER ESTABLISHED THAT OLVIN BURGOS DID NOT WORK THE REQUISITE DAYS IN 2016 AND 2017 TO BE ELIGIBLE TO VOTE ACCORDING TO THE DANIEL/STEINY FORMULA

Based on the time sheets and W-2s provided by the Employer concerning Olvin Burgos, and un rebutted testimony provided by Espinal, I find that Olvin Burgos worked approximately 25 days for the Employer in 2017, and zero days in 2016. Therefore, according to the *Daniel/Steiny* formula, and the stipulated unit, Burgos is ineligible to vote, thus I recommend the Employer's challenge to his ballot be sustained.⁴

THE EMPLOYER FAILED IN ITS BURDEN TO ESTABLISH THAT CARLOS LARA QUIT VOLUNTARILY PRIOR TO THE COMPLETION OF THE LAST JOB FOR WHICH HE WAS EMPLOYED BY THE EMPLOYER

At hearing, the parties stipulated that Carlos Lara worked the requisite number of days to be eligible to vote according to the *Daniel/Steiny* formula, and the stipulated unit. However, the Employer contests Lara's eligibility on the basis that he quit voluntarily prior to the completion of the last job for which Lara was employed by the Employer. The Employer failed to establish that Lara quit his last job with the Employer prior to completion.

Lara's former foreman, Jose Santos, testified regarding Lara's last job with the Employer. According to Santos, Lara completed the first phase of the Laurel High School job on or about June 2. Shortly before phase two of the project was to begin on or about June 19, 2017, Santos called Lara to see if he was working.⁵ Lara informed Santos that he had not been working with any other employers because he has had health issues that required him to be hospitalized. Santos told Lara to call him when he was capable of working again. Santos admitted that he wasn't required to call Santos for phase two of the Laurel High School job.⁶ There is no evidence that Lara had a reasonable expectation of working phase two, or was aware there was a phase two until Santos' call the day before phase two started.

Aguilar testified that she called Lara sometime in July 2017 to offer Lara a job one day before the job was scheduled to begin. Lara told Aguilar that he was undergoing medical treatment, and thus, couldn't work the job. Aguilar told Lara to call him when he was ready to

³ In its brief, the Petitioner concedes that the Employer presented evidence sufficient to establish that all the contested voters, with the exception of Carlos Lara and Herminia Banegas, were not eligible to vote in the election. (Pet. Brf. Pg 1., fn. 1).

⁴ In addition to the Employer's assertion that Burgos did not work the requisite number of days with the Employer needed to be eligible to vote, the Employer also challenged Burgos' eligibility based on Burgos' allegedly quitting his last employment with the Employer prior to completion of the project. Because I find that the Employer met its burden to establish that Burgos did not have the requisite days worked to be eligible to vote, I do not address the Employer's argument that Burgos voluntarily quit his lost employment with the Employer.

⁵ The record is unclear if Santos was calling Lara to specifically offer him a job on phase two of the Laurel High School project.

⁶ Phase two of the Laurel High School project was only three days of work.

work. Again, there is no evidence that Lara had a reasonable expectation of working the job referenced by Aguilar, or that the Employer had a reasonable expectation that Lara would work the job.

Both Santos and Aguilar made clear that in the Employer's view, Lara was welcome to return to work with the Employer. Additionally, there is no evidence that Lara told either Santos or Aguilar that he intended to quit his employment with the Employer, or intended to do so in the near future. Lara has not worked for the Employer since June 2017.

The exception in the *Daniel/Steiny* formula for voluntary quits or discharges for cause provides that a potential voter will be ineligible if "those employees...had been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed." *Steiny & Co., Inc.*, 308 NLRB 1323, 1326 (1992). When a ballot is challenged on the ground that a voter has quit his or her employment prior to the election, the challenging party must demonstrate that the voter manifested a clear intent to quit before the election. See *Orange Blossom Manor*, 324 NLRB 846, 847 (1997)(sustaining challenge where employee clearly and unambiguously expressed intent to resign); cf. *Foot & Davies, Inc.*, 262 NLRB 238, 238 (1982)(finding that employee did not abandon interest in his struck job absent evidence of "a clear intention to quit"). The Employer, the challenging party here, has not met this burden.

There is no evidence that Lara unambiguously expressed intent to resign from the Employer, nor is there evidence that Lara failed to complete his last job with the Employer. First, a preponderance of the record evidence supports the finding that Lara finished phase one of the Laurel High School job without any knowledge of, or expectation to work, phase two. When Santos and Aguilar called Lara on short notice, Lara stated that he was undergoing medical treatment. Nothing in Santos' or Aguilar's testimony indicates that Lara was quitting his employment with the Employer, or would not return in the future. Both Santos and Aguilar told Lara to call them when he was ready to work indicating they expect Lara to return to work.

I conclude that the Employer failed in its burden to establish that Lara voluntarily quit his last employment with the Employer prior to the completion of his last job with the Employer, or that Lara unambiguously expressed his intent to resign from the Employer. Because Lara met the requisite days worked according to the *Daniel/Steiny* formula, the Employer's challenge to Carlos Lara's ballot should be overruled.

**THE EMPLOYER FAILED TO ESTABLISH THAT HERMINIA BANEGAS DID NOT
WORK THE REQUISITE NUMBER OF DAYS ACCORDING TO THE
DANIEL/STEINY FORMULA**

An issue arises regarding the days worked by Herminia Banegas because the time sheets offered into evidence by the Employer do not account for, or reconcile with, the total amount of earnings paid by the Employer to Banegas identified in her 2016 and 2017 W-2s. The Employer, in its brief, argues that after making necessary assumptions caused by gaps in the Employer's own documentary evidence, the preponderance of the evidence establishes that Banegas failed to work the requisite 45 days during the two year eligibility period. Naturally, the Employer's argued assumptions are in the light most favorable to its position. The Petitioner however argues

that the assumptions caused by the gaps in the documentary evidence should be construed in the light most favorable to Petitioner's case since the Employer has the burden of establishing that Banegas is ineligible to vote. Because the Employer carries the evidentiary burden as the challenging party, and because the Employer has all the relevant documents, including the missing documents, identifying Banegas' work history in its possession, I agree with the Petitioner to the extent that Petitioner's arguments are reasonably supported by record evidence.⁷

Starting with the number of days worked not in dispute, the parties stipulated that time sheets offered into evidence by the Employer showed Banegas worked for the Employer for 12 days in 2017 and 7 days in 2016. The Employer also presented time sheets showing that Banegas worked for Rath or Retro for 19 days total in 2016 and 2017.

Banegas' W-2s for 2016 and 2017 reveal that she earned \$3,829.00 and \$3,351.22 respectively. With regard to payroll documents that identify wage rates that were admitted into evidence, four such records show that Banegas was paid \$14 per hour, whereas one record shows her being paid \$15.84 per hour for a single day of work in July 2017. In order to estimate the potential number of days Banegas worked for the Employer in 2016 and 2017, I have to make a finding concerning Banegas' assumed wage rate with the Employer. Based on the preponderance of the record evidence, I assume her wage rate to be \$14 per hour. My assumption is based on the majority of documented wage rates in the evidence supporting \$14 per hour and the fact that the Employer has all of the missing records in its possession or control, therefore, if an assumption must be made, it should be construed against the Employer due to its failure to account for missing time sheets and wage rates.

For 2017, according to Banegas' W-2, she earned \$3,351.22.⁸ If you reduce Banegas' earnings by the eight days she was leased to either Rath or Retro, assuming a \$14 per hour wage rate and eight hour work day, Banegas' earnings for 2017 are reduced to \$2,679.22. The record evidence reveals that one day of work performed by Banegas was done at \$15.84 per hour for eight hours. However, the record is not clear if this day worked by Banegas was for the Employer or a leasing company, therefore, because of the uncertainty, and the Employer controlling the records, I find that the day of work performed at \$15.84 was for the Employer. If this one day at \$15.84 per hour is reduced from the earnings, that leaves \$2,552.5 of earnings. During the hearing, Petitioner's counsel presented an ADP pay stub for Banegas from December 2017 for which the Employer had not presented a time sheet. Only after the Petitioner cross-examined Espinal concerning the inconsistency in the pay stub and the time sheet did the Employer suddenly appear with Banegas' December 2017 time sheet showing a full day worked by Banegas with a company called CC Construction for \$14 per hour. Since Banegas was leased to CC Construction, this day of work should not be counted as working for the Employer, and brings earnings by Banegas down to \$2,440.50. By dividing \$2,440.50 by \$14 per hour, it gives 174.32 hours of work. Then, by dividing 174.32 by eight (since eight hour work days are assumed), gives the number of possible days worked at the Employer by Banegas as 21.79 days

⁷ To highlight how close the parties are on the issue of Herminia Banegas, the Employer in its brief argues that the calculated number of days Banegas potentially worked for the Employer should be approximately 44 days. The Petitioner, in its brief, argues the calculated number of days should be 45.1 days.

⁸ The payroll records and W-2 included in the record evidence do not distinguish between the Employer, Rath, or Retro, or any jobsite the employee worked.

for 2017. Add the one day at \$15.84 to the 21.79 potential days worked by Banegas at 14 per hour, and Banegas potentially worked 22.79 for the Employer in 2017.

For 2016, Banegas earned \$3,829 according to her W-2. If you reduce Banegas' earning by the 11 days she was leased to either Rath or Retro, assuming eight hour work days, and assuming a \$14 per hour wage rate, Banegas' earning for 2016 are reduced to \$2,597. By dividing the \$2,597 in remaining earnings by \$14 per hour, Banegas worked 185.5 hours possibly working for the Employer. Then, by dividing 185.5 possible hours by eight (hours worked per day) that leaves the possibility that Banegas worked 23.19 days worked for the Employer in 2016.

By adding up the maximum possible days worked by Banegas at the Employer in the 24 months prior to December 30, 2017 eligibility date, Banegas may have worked approximately 46 days (rounding up) for the Employer. Therefore, I find that the Employer failed to establish that Banegas did not work the requisite number of days established by the *Daniel/Steiny* formula, and therefore, the Employer's challenge to her vote should be overturned.

CONCLUSIONS

Based on the factual and credibility findings identified above, I make the following recommendations regarding the 11 challenged ballots:

- *The Employer's challenges to the ballots of Burgos, Garcia, Perez, Vasquez, Cruz, Flores, W. Vasquez, Cardenas, and Gutierrez should be sustained.*
- *The Employer's challenge to Carlos Lara's ballot should be overruled.*
- *The Employer's challenged to Herminia Banegas' ballot should be overruled.*

APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director for Region 5 by **May 24, 2018**. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website, but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, Region 5, Bank of America Center – Tower II, 100 South Charles Street, Suite 600, Baltimore, Maryland 21201.

Pursuant to Sections 102.111 — 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business 5:00 p.m. Eastern Daylight Savings Time on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Daylight Savings Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated at Baltimore, Maryland, this 10th day of May 2018.

/s/ Brendan Keough
Brendan Keough, Esq.
Hearing Officer
National Labor Relations Board
Region 5
Bank of America Center, Tower II
100 South Charles Street
Suite 600
Baltimore, MD 21201

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D & H Demolition, LLC)	
)	
Employer)	
)	
and)	Case 05-RC-183865
)	
Construction and Master)	
Laborers Local Union 11)	
)	
Petitioner)	

**D & H DEMOLITION LLC'S EXCEPTIONS TO THE HEARING OFFICER'S REPORT
AND RECOMMENDATIONS ON CHALLENGED BALLOTS AND SUPPORTING
BRIEF**

Edward R. Noonan
Eckert Seamans Cherin & Mellott, LLC
Suited 1200
1717 Pennsylvania Ave. N.W.
Washington, D.C. 20006

D & H Demolition LLC, (the “Company” or “D&H”) by its attorneys Eckert Seamans Cherin & Mellott, LLC hereby files to the Acting Regional Director the following exceptions to the Hearing Officer’s Report and Recommendations on Challenged Ballots in this proceeding, together with a supporting brief.¹

EXCEPTIONS

1. The Hearing Officer erred in finding that challenged voter Herminia Banegas had worked the requisite number of days under the *Steiny/Daniel* formula and was therefore eligible to vote.
2. The Hearing Officer erroneously concluded that challenged voter Carlos Lara was eligible to vote because he had not voluntarily quit his employment.

BACKGROUND

D & H is in the business of asbestos removal and demolition. This matter involves the voting eligibility of certain, former D & H employees under the eligibility formula set out in *Daniel Construction* 133 NLRB 264 (1961) (as modified in *Daniel Construction Company*, 167 NLRB 1078 (1967)) and *Steiny and Company*, 308 NLRB 1323 (1992). It arises out of a mail ballot election conducted among employees employed by D & H in the following stipulated unit.²

¹ References to the official transcript of this proceeding shall be made as (“TR ___”). References to Board exhibits, Petitioner exhibits and Company exhibits shall be made as (“BdX ___”), (“PX ___”) and (“EX ___”) respectively. References to the Hearing Officer’s Report and Recommendations on Challenged Ballots shall be made as (“Report at ___”).

² D & H requests that the Acting Regional Director take administrative notice of the proceeding in 05-RC-183442. In that case, the Petitioner sought a unit of D & H employees jointly employed by Retro Environmental (“Retro) and Rath Enterprises (“Rath”). The Regional Director noted that D & H performed its own work as a subcontractor but also “leased” employees to Retro and Rath to work on Retro and Rath jobsites. The Regional Director agreed with the Petitioner and found that D & H, Retro and Rath were joint employers of D & H employees on the Retro and Rath sites. Since Case 5-RC-183442 was pending and being litigated when the instant petition was filed, and since the Petitioner was taking the position that a joint employer relationship existed, it is clear that the petition in this proceeding sought to exclude the D & H employees sought in case 05-RC-183442. It is also clear that, in stipulating to the unit in this proceeding and excluding “jointly employed” employees, the parties intended to

EMPLOYEES ELIGIBLE TO VOTE: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area who were employed by the Employer during the payroll period ending December 30, 2017.

EMPLOYEES NOT ELIGIBLE TO VOTE: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election.

The tally of ballots showed that there were 0 votes cast for the Petitioner, 0 votes cast against the Petitioner with 13 determinative challenges, all of whom had been challenged by the Board because they were not on the election eligibility list. Thereafter, the Acting Regional Director issued a Notice of Hearing for the purpose of resolving the challenges to the following voters:

Luis Alonzo Fonseca
Olvin Burgos
David Gutierrez
Silvia Garcia
Iris Perez
Nery Vasquez
Aracelis Cruz
Ever Flores
Walter Vasquez
Herminia Banegas
Felipa Cardenas
Carlos Lara

Following issuance of the Notice of Hearing, the parties agreed that Fonseca was ineligible to vote.

exclude those D & H employees employed on any sites other than a D & H-only jobsites. Accordingly, days worked on such other job sites do not count under the Steiny/Daniel formula.

On April 24 and 25, 2018 a hearing on the challenged ballots was held before Hearing Officer Brendan Keough. On May 10, the Hearing Office issued a report on challenged ballots in which he found that all challenged voters except Herminia Banegas and Carlos Lara were ineligible to vote because they had failed to work the requisite number of days under the *Steiny/Daniels* eligibility formula. The Hearing Officer found that Banegas was eligible in that D & H had failed to prove that Banegas had not worked a total of 45 days in the two year eligibility period. Rather, the Hearing Officer found that the record established that Banegas, who worked in both 2017 and 2016, “may have worked approximately 46 days (rounding up)” during the eligibility formula. (Report at 8)

There was no dispute that challenged voter Carlos Lara had worked the requisite number of days to be eligible to vote. The Hearing Officer concluded that Lara was eligible to vote, rejecting D & H’s evidence that Lara was ineligible because he voluntarily quit his employment. He found that there was no evidence the Lara had “unambiguously expressed and intent to resign” and or that he had voluntarily quit his employment “prior to the completion of his last job worked”. (Report at 6)

ARGUMENT

A. The Hearing Officer erred in finding that Herminia Banegas was eligible to vote.

The Hearing Officer’s conclusion that Banegas may have worked approximately 46 days is the result of mathematical error, his misreading the record, and his failure to consider record evidence. Under the Hearing Officer’s methodology for calculating the days Banegas may have worked, the record actually establishes that Banegas could not have worked more than 43 days during the eligibility period.

In calculating the days Banegas worked, the Hearing Officer found that, except for one day in which the record showed that Banegas had been paid \$15.84 per hour, Banegas was paid \$14.00 per hour for all other time worked. (Report at p. 7) The Hearing Officer also found that Banegas worked 8 hours per day for all days she worked. (Report at p. 7) Finally, the Hearing Officer found that, except for time sheets admitted to evidence that showed that Banegas had worked on a site to which she had been “leased” to another employer (EXs 2, 4, 5 and 7) all other time worked was worked directly for D & H on D & H – only jobsites. (Report at pp. 7-8).³

In calculating the days Banegas worked in 2017, the Hearing Officer made a number of errors. The Hearing Officer correctly found that Banegas earned \$3351.22 in 2017 and worked 8 days for Retro. (Report p. 7). However, the Hearing Officer erroneously found that the value of those 8 days (\$14 per hour x 8 hrs) amounted to only \$672.00 which, when subtracted from \$3351.22 resulted in \$2679.22. (Report p. 7) The Hearing Officer’s error was that \$672 equals only 6 days (\$14 x 8 hrs x 6 days = \$672) not the 8 days worked for Retro. The correct value of the 8 days worked at Retro is \$896 (\$14 x 8 hrs x 8 days = \$896). Subtracting that amount from \$3351.22 results in \$2455.22.⁴

The Hearing Officer next subtracted the value of the one day for which payroll records show that Banegas earned \$15.84 per hour, not \$14.00. Subtracting the value of that day (\$15.86 x 8 hrs = \$126.72) from \$2455.22 equals \$2,328.50.⁵ The Hearing Officer then deducted the value of the excluded day worked by Banegas at C & C Construction (Report at 7, EX 7). Deducting that amount (\$14 x 8 = \$112) from \$2,328.50 leaves \$2,216.50.⁶ The Hearing Officer

³ Payroll records do not distinguish between days worked on D & H-only jobsites and excluded days worked on jobsites of other employers. Only the time sheets introduced as evidence identify a D&H-only site or an excluded job site. (EX 1 through 5 and 7; Report at fn. 8)

⁴ Not the \$2679.22 found by the Hearing Officer.

⁵ Not the \$2552.20 found by the Hearing Officer.

⁶ Not the \$2440.50 found by the Hearing Officer.

then divided the remainder by \$14 per hour and then by 8 hours per day to get the number of days that Banegas worked on D & H-only sites (Report at p. 7) resulting in 21.79 days. (Report at 7). Finally, he added in the one day that Banegas had worked for D & H for \$15.84 per hour for a total of 22.79 days to be counted under the *Steiny/Daniel* formula for 2017. (Report 7)

It was in the next-to-last step above that the Hearing Officer made his second calculation error. That error was assuming, contrary to the time sheets (EX 1), that all the days worked for D & H in 2017 had been 8 hour days. Contrary to the Hearing Officer, the twelve, 2017 D & H time sheets in evidence show that, on August 15 and August 16, 2017, Banegas worked 10 hours and 15 hours respectively (EX 1, 11th and 12th pages). Just as the Hearing Officer first deducted the value of the one day Banegas worked for D & H at \$15.84, the \$350 earned by Banegas on August 15 ($\$14 \times 10 = 140$) and August 16 ($\$14 \times 15 = \210) should have been deducted in advance of his final calculation to reach D & H-only days worked. The correct calculation was to deduct \$310 after the deduction for the day worked at \$15.84 and the one excluded day worked for C & C Construction. Such results in \$1866.50 ($\$2216.50 - \$310 = \1866.50). The \$1866.50 is then divided by \$14 and then divided by 8 to result in days worked at D & H-only sites. The resulting number of days is 16.67 days. The final step is to add the day worked for C & C as well as August 15 and August 16 which results in 19.67 days, rounded up to 20 days.⁷

In calculating Banegas' included days worked during 2016, the Hearing Officer miscalculated excluded days and again erroneously ignored days in which Banegas had worked in excess of 8 hours on D & H only sites. Thus, the Hearing Officer correctly found that Banegas had earned \$3829 in 2016. (Report at 8). Finding that Banegas had worked 11 days for Rath or Retro, he deducted the earnings for those days based on 8 hour days at \$14.00 per hour to reach a

⁷ Not the 22.79 days found by the Hearing Officer. The 3 day difference is reflected in the 2 excluded days worked for Retro that the Hearing Officer failed to deduct in his first calculation and the 9 hours worked in excess of 8 hour shifts on August 15 and 16.

remainder of \$2597 (11 days x \$14 hr x 8 = \$1232 and \$3829 - \$1232 = \$2597). Next, the Hearing Officer divided \$2597 by \$14 to result in 185.5 hours worked and then by 8 hrs to result in 23.19 days worked at D & H-only jobsites under the Steiny/Daniel formula. This finding of 23.19 days worked resulted from 2 errors by the Hearing Officer. Contrary to the Hearing Officer, the record shows that Banegas worked only 10 excluded days for Rath in 2016, not 11 days. (EX 4, the 23rd through 33rd pages). The Hearing Officer's second error was to assume that all remaining days worked were worked for D & H at 8 hours per day. Contrary to the Hearing Officer, the 2016 D & H-only time sheets in the record (EX 3) show that, of the 7 days worked, 6 were worked in excess of 8 hours per day. One day was worked for 11 hours (July 5; EX 3, 1st page), 4 days were worked for 10 hours each (July 7, 8, 11 and 13; EX 3, 3rd, 4th, 5th and 7th pages) and one day was worked at 11.5 hours⁸ (July 12; EX 3, 6th page). The total value of these days worked in excess of 8 hours per day at \$14 per hour is \$875 (62.5 hrs x \$14 = \$875).

The correct calculation for the days worked on D & H-only jobsites in 2016 is to subtract the value of the days worked for Rath (\$14 x 10 days x 8 hrs = \$1120) from \$3859 to equal \$2739 (\$3859 – 1120 = \$2739). The next step is to subtract \$875 (the value of the 6 days worked for D & H in excess of 8 hours) from \$ 2739, resulting in \$1,864. Dividing \$1864 by \$14 and then by 8 hrs results in 16.64 days worked at D & H only sites. Adding to those days, the 6 D&H-only days worked in excess of 8 hours per day results in 22.64 days, rounded up to 23 days for 2016 that are counted under the *Steiny/Daniel* formula. Adding the 20 days worked in 2017 results in a maximum total of 43 days worked in the 2 year eligibility period.

As did the Hearing Officer, the corrected calculations assume that any time worked that was not demonstrated to be otherwise was worked on a D & H-only jobsite. Accordingly, a total

⁸ While the time sheet indicates "11.30" hours, it is clear from the start and end times that the total time worked was 11 hours, 30 minutes with a 30 minute lunch period.

of 43 days is the maximum number of days Banegas could have worked on D & H-only jobsites during the 24 month Steiny/Daniel period. Therefore, Banegas must be found to be ineligible to vote and the challenge to her ballot must be sustained.

B. The Hearing Officer erred in concluding that Carlos Lara was eligible to vote.

Contrary to the record evidence that Carlos Lara's separation from employment from D & H was due to his own volition rather than the conclusion of project on which he was working, the Hearing Officer erroneously concluded that Lara was eligible to vote.

The Hearing Officer found that Carlos Lara was working in June 2017 on a project at Laurel High School (TR 87) and that the first phase of the project ended on June 2. The Hearing Officer found that the second phase of the Laurel High School project commenced on or about June 19 and that, shortly before that, D & H supervisor Jose Santos called Lara "to see if he was working". (Report at 5; TR 86-88)⁹ Lara told Santos that he was not working because he had a health issue and was in the hospital. (TR 88) Santos told Lara to call him or the office when he was ready. (TR 88) (Report at 5) Lara was also called in June or July¹⁰ by Margo Aguilar, the D & H Administrative Assistant, who calls employees for work and gives them their schedules. (TR 105; 112; 141)¹¹ Aguilar called Lara as directed by her superior to "tell him to come back to work", that she had a job for him. (TR 113; 142). The job was for the following day. (TR 142)¹²

⁹ Contrary to the Hearing Officer, Santos never testified that he called Lara "shortly" before second phase of the job. He only confirmed that he called before the start of the second phase (TR 91) and actually testified that he called Lara on the Sunday or Monday following the completion of the first phase on June 2 (TR 92). Santos also testified that, on the Friday that the first phase finished, he told Santos, "to call me or call the office for the next job" (TR 88) and that he called Lara on Sunday or Monday to "ask him what he was doing. I see will see people out of work and I put them to work". (TR 91-92) and that he calls the office to see if there is a position available. Thus, contrary to the Hearing Officer, the preponderance of the evidence is that, on the Sunday following the conclusion of the first phase of Laurel High School project, Santos called Lara for the purpose of placing him at another jobsite.

¹⁰ The Hearing Officer found the call to take place in July. (Report at 5; TR 112) However, Aguilar also testified that the call was in June. (TR 141).

¹¹ Santos does not assign employees to projects. (TR 96)

¹² Given such testimony, the Hearing Officer's suggestion that neither Lara nor the Company had an expectancy that Lara would work the job is inexplicable. Lara was clearly being called in order to put him to work.

Lara refused, telling Aguilar that he was sick and was “undergoing some treatment or exams”. (TR 113). Aguilar then told Lara to call her when he got better. (TR 113; 143). The second phase of the Laurel High School project began on June 19, 2017. Lara was not employed on that work. Both Santos and Aguilar testified that Lara never called either of them. (TR 88; 113). Lara has not been called for work since Aguilar’s call and Lara has not worked for D & H since June of 2017. (Report at 6; TR 143).

As described above, the record establishes that, following the completion of the first phase of the Laurel High School project, Lara was called that weekend by Jose Santos for the purpose of putting him to work and that Lara preempted completion of that process by stating that he would not accept an assignment because he was sick. The record establishes that shortly thereafter, Lara was called by Margo Aguilar for the purpose of putting him to work the following day and he again declined, claiming that he was having tests done. The record establishes that Lara was instructed both by Santos and Aguilar to call when he was desirous of returning and that, since June 2, 2017 through the date of the hearing, Lara never called the office, nor did anyone from the Company call Lara. Under such circumstances, the policies underlying the *Steiny/Daniel* formula dictate that Lara be found ineligible to vote.

The *Steiny/Daniel* formula is based on the recurrent and intermittent nature of employment in the construction industry¹³. Its purpose is to distinguish between those construction industry employees who, while not employed on the date of the election,

¹³ “The construction industry is different from many other industries in the way it hires and lays off employees. We recognized these differences in the first *Daniel* decision and again in our decisions modifying the *Daniel* formula when we stated that construction employees may experience intermittent employment, be employed for short periods on different projects, and work for several different employers during the course of a year. (Citations omitted). We also have recognized the fluctuating nature and unpredictable duration of construction projects. See generally, *Clement-Blythe Cos.*, 182 NLRB 502 (1970).” *Steiny and Company*, 308 NLRB 1323 (1992) at 1324.

nevertheless can be presumed to have a continuing interest in employment with the employer, and to do so, it uses an amount of days worked in a 12 month and/or 24 month period preceding the eligibility date. In *Steiny*, the Board rejected the argument that it should use the traditional test for laid off employees of “reasonable expectancy of re-employment in the near or foreseeable future”, concluding that a formula was preferable to individualized eligibility determinations under the traditional test. *Steiny* at 1325.

The *Steiny/Daniel* formula determines the eligibility of employees who are laid off. An employee, assuming the requisite number of prior days worked, is eligible to vote if his/her last employment with the employer ended as a result of the completion of the work for which he/ she was employed. In *Daniel Construction Company*, 167 NLRB 1078 (1967) the Board clarified the formula to exclude any employee whose employment was terminated for reasons other than layoff :

At the same time, however, we are not unmindful that the standard or formula applied must not be so broad in application that it will permit individuals who have no likelihood of future employment with the Employer to decide the question whether the employees will have representation. For this reason, we think that the desired result can be achieved by excluding those individuals who have quit voluntarily or have been terminated for cause prior to the completion of the last job for which they were employed. *Id.* at 1081

In excluding employees who voluntarily quit prior to the completion of their last job, it is obvious that the Board viewed those employees - whose employment relationship was severed beyond the mere act of being laid off due to the completion of the work or project - as lacking any of the continued interest in employment held by those merely laid off. In short, a construction industry employee who voluntarily quits or is fired is ineligible just like an employee in any other industry. The only difference is that, under the *Steiny/Daniel* formula no “individualized determination” (*Steiny* at 1324) of the employee’s expectancy of recall is made.

The Hearing Officer found that there was no evidence that Lara had voluntarily quit his employment prior to the completion of job on which he was last employed. He found that Lara's last employment ended at the completion of phase one of the Laurel High School project and Lara was "without any knowledge of, or expectation to work" on the second phase of the job. (Report at 6). While the Hearing Officer relied on the fact that Lara's last day worked was the day the first phase of the Laurel High School project ended, he ignored unrebutted record evidence that Lara was 1) on that very day, told by his supervisor Santos to call him or the office for the next job (TR 88); 2) called by Santos, that weekend concerning his availability for work; and 3) later called by Margo Aguilar to put him to work the next day (TR 113; 142). Accordingly, even assuming Lara did not have "knowledge of, or expectation to work" on the second phase of Laurel High School, he certainly had knowledge of, and an expectancy of, continuing in his employment and being reassigned to another project. In fact, he was first told to call for reassignment (which he did not) and then was called to be put to work (which he declined). Thus, Lara was not in the status of an employee whom the *Steiny/Daniel* formula treats as eligible – one merely laid off at the completion of a construction project awaiting recall. He was called to work and refused.

In regard to the policies underlying the *Steiny/Daniel* formula, there is no qualitative or substantive difference between an employee who voluntarily quits his employment prior to the completion of his/her last project and the employee who quits prior to commencement of, or who refuses, his/her next assignment.¹⁴

¹⁴ It defies logic to conclude that an employee who submits a letter of resignation on the last day of a construction project is ineligible, but an employee who submits a similar letter on the day after the end of the project remains eligible as a laid off employee. To the extent the *Steiny/Daniel* formula can be interpreted otherwise, the Board should clarify the formula to hold ineligible those who quit employment prior to the election.

In overruling the challenge to Lara's ballot, the Hearing Officer held that D & H had failed to establish that Lara had "manifested a clear intent quit" or "unambiguously expressed and intent to resign". (Report at 6) In so finding, the Hearing Officer noted that, in declining further employment prospects to Santos and declining employment to Aguilar, Lara told them that he could not work because of a medical issue and that he was having tests done. He also relied on the fact that, when so told by Lara, both Santos and Aguilar told Lara to call when he wanted to return.

In finding that Lara had not quit, the Hearing Officer erroneously ignored the undisputed fact that Lara *declined* employment. Moreover, even assuming that Lara was being truthful when stating that he had a medical condition and was having tests,¹⁵ the Hearing Officer erroneously ignored the un rebutted evidence that, having declined employment by claiming inability to come to work, Lara never, as instructed, called D & H for the purpose of returning to employment, never otherwise contacted D & H, never was called by D & H after July of 2017 and never returned to employment with D & H. Such can only be found to be caused by Lara's own election not to call D & H and, accordingly the overwhelming evidence is that Lara abandoned his employment. Contrary to the Hearing Officer, a finding that Lara quit his employment by declining work and then never contacting D & H does not require that Lara affirmatively express an intent to quit to D & H. Rather the Board has held that a finding that employment as terminated can be made from surrounding circumstances. As the Board stated in *J.C. Penny*, 347 NLRB 127 (2006):

"Affirmative termination can be found even in the absence of any formal or informal communication, in instances where the surrounding circumstances make clear that the employment relationship has ended." *Air*

¹⁵ There is no evidence supporting this claim. Lara was not called to testify by the Petitioner. Moreover, there is no evidence that Lara refusing reassignment to another project was due to a medical condition rendering him disabled or merely one requiring his absence while undergoing tests.

Liquide America Corp., 324 NLRB 661, 663–664 (1997)
(citing *Cavert Acquisition Co. v. NLRB*, 83 F.3d 598, 607
(3d Cir. 1996))

When, as in this case, an employee, eight months prior to an election, refuses work, refuses to subsequently call for work and is never again called for work, the circumstances make clear that the employee has quit his employment prior to the election.

In finding Lara eligible, the Hearing Officer also erred in relying on the fact that Lara had been told by both Santos and Aguilar to call when he was ready to return to work. Contrary to the Hearing Officer, the fact that D & H considered or even continues to consider Lara eligible for rehire does not alter the fact that he quit and that his status as an employee ended. It is Lara's refusal of work and his decision not to return to D & H which determines his status. Moreover, whether Lara had an opportunity or expectancy of being reemployed is *irrelevant* under the *Steiny/Daniel* formula because the formula is a total substitution for the traditional "reasonable expectancy of employment" test which applies to employers outside the construction industry. To consider the expectancy, possibility or probability of Lara working again for D & H is to engage in the very "individualized determination" of voting eligibility that the *Steiny/Daniel* formula eschews.¹⁶ Thus, under the formula, an employee who quits employment before the end of the last project upon which he/she works is ineligible despite the fact that he/she may be considered eligible for rehire. Accordingly, the challenge to the ballot of Carlos Lara must be sustained.

¹⁶ The formula is "an easily ascertainable, short hand and predictable method of enabling the Board expeditiously to determine eligibility by adopting 'a period of time which will likely insure eligibility to the greatest number of employees having a substantial interest in the choice of representative.'" *Steiny & Company*, 308 NLRB 1323 (1992) at 1326 (quoting *Alabama Drydock Co.*, 5 NLRB 149, 156 (1938)).

CONCLUSION

For the above reasons, the challenges to the ballots of Herminia Banegas and Carlos Lara must be sustained and a certification of results issued

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward R. Noonan", with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

The undersigned certifies that, on this 24th day of May 2018, a true and correct copy of the foregoing Exceptions to Hearing Officer's Report and Recommendations of Challenged Ballots and supporting brief were served electronically and by regular, United States Mail, postage pre-paid, upon Counsel for Petitioner at the below address.

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Edward R. Noonan

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D & H DEMOLITION, LLC

Employer

and

Case 05-RC-183865

CONSTRUCTION AND MASTER
LABORERS' LOCAL UNION 11,
AFFILIATED WITH LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA

Petitioner

DECISION AND DIRECTION ON CHALLENGES

On September 8, 2016, Construction and Master Laborers' Local Union 11, affiliated with Laborers' International Union of North America ("the Petitioner") filed the petition in this matter seeking to represent certain employees of D & H Demolition, LLC ("the Employer"). Pursuant to a stipulated election agreement executed by the parties, an election was conducted on March 7, 2018¹ under the supervision of the Acting Regional Director among certain employees of the Employer,² with the following results:

¹ All dates herein are in 2018, unless specified otherwise.

² The secret-ballot election was held for the following unit: "Including: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area who were employed by the Employer during the payroll period ending December 30, 2017. Excluding: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act. Also eligible

Approximate number of eligible voters	23
Number of void ballots	0
Number of votes cast for the Petitioner	0
Number of votes cast against participating labor organizations	0
Number of valid votes counted	0
Number of challenged ballots	12
Number of valid votes counted plus challenged ballots	12

Challenges are sufficient in number to affect the results of the election.³
(Bd. Exh. 1–E.)

Subsequent to March 7, the parties resolved one of the challenged ballots, and, on April 6, a revised tally of ballots (“Revised Tally of Ballots”) issued with the following results:

Approximate number of eligible voters	23
Number of void ballots	0
Number of votes cast for the Petitioner	0
Number of votes cast against participating labor organizations	0
Number of valid votes counted	0
Number of challenged ballots	11
Number of valid votes counted plus challenged ballots	11
Number of Sustained challenges (<i>voters ineligible</i>)	1

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are sufficient to affect the results of the election.

Bd. Exh. 1–F.

to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.” Hearing Officer’s Report at 1-2.

³ In this decision, citations to the hearing transcript appear as “Tr. [page numbers].” Citations to the Employer’s exhibits appear as “Emp. Exh. [exhibit number],” citations to Petitioner’s exhibits appear as “Pet. Exh. [exhibit number],” and citations to Board exhibits appear as “Bd. Exh. [exhibit number].”

Thus, on April 9, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, the Acting Regional Director ordered a hearing for the purpose of receiving evidence to resolve the issues raised by the challenged ballots.⁴ Bd. Exh. 1-H.

The hearing took place on April 24 and 25 in Baltimore, Maryland, and the designated Hearing Officer heard testimony and received into evidence relevant documents. *Id.* The parties were permitted to file post-hearing briefs. Tr. at 184:25-185:20.

On May 10, the Hearing Officer issued a Report and Recommendations on Challenged Ballots in which he made the following recommendations: (1) to sustain the Employer's challenges to the ballots of Olvin Burgos, Silvia Garcia, Iris Perez, Nery Vasquez, Aracelis Cruz, Ever Flores, Walter Vasquez, Felipa Cardenas, and David Gutierrez; (2) to overrule the Employer's challenge to the ballot of Carlos Lara ("Lara"); and (3) to overrule the Employer's challenge to the ballot of Herminia Banegas ("Banegas"). Hearing Officer's Report at 3.

On May 24, the Employer timely filed exceptions and a brief in support of its exceptions to the Hearing Officer's Report. The Petitioner did not file exceptions or an answering brief to the Employer's exceptions.

I have reviewed the record in light of the exceptions and brief, and I adopt the Hearing Officer's findings and recommendations to the extent it is consistent with this Decision. Except where noted below, I find the Hearing Officer's rulings made at hearing are free from prejudicial error and are hereby affirmed. Specifically, I adopt the Hearing Officer's recommendation to overrule the challenge to Lara's ballot. I do not adopt the Hearing Officer's recommendation to overrule the challenge to Banegas' ballot, finding instead that the challenge should be sustained.

⁴ No party filed objections to the conduct of the election or to conduct affecting the results of the election.

I. THE CHALLENGES

There are 11 determinative challenged ballots reflected on the Revised Tally of Ballots. As noted above, I have adopted the Hearing Officer’s recommendation to sustain the challenges to the ballots of Burgos, Cardenas, Cruz, Flores, Garcia, Gutierrez, Perez, N. Vasquez, and W. Vasquez.⁵ The names of the remaining challenged voters, the party challenging each voter, and that party’s reason for doing so, are as follows:

NAME	CHALLENGER	REASON
Herminia Banegas	Employer	Lacks requisite number of working days under <i>Daniel/Steiny</i> formula
Carlos Lara	Employer	Voluntarily quit prior to completion of last job

II. THE DANIEL/STEINY FORMULA

The Board uses the *Daniel/Steiny* formula to determine construction industry employees’ eligibility to vote in a Board-run election. *Daniel Construction Company, Inc.*, 133 NLRB 264, 267 (1961), modified 167 NLRB 1078, 1079 (1967), reaffd. and further modified in *Steiny & Co.*, 308 NLRB 1323, 1326 (1992). The parties stipulated to the use of that formula in this election. Bd. Exh. 1–D at 2.

In articulating the rationale for using this formula, the Board noted that the “construction industry is different from many other industries in the way it hires and lays off employees...construction employees may experience intermittent employment, be employed for short periods on different projects, and work for several different employers during the course of a year.” *Steiny*, 308 NLRB at 1324 (noting the intermittent, “fluctuating nature and

⁵ Neither party filed exceptions to the Hearing Officer’s recommendations to sustain the Employer’s challenges to those nine ballots.

unpredictable duration nature of employment” in the construction industry) (internal citations omitted).

Under the *Daniel/Steiny* formula, “in addition to those eligible to vote under the standard criteria, unit employees are eligible if they have been employed for 30 days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment in those 12 months and have been employed for 45 days or more within the 24-month period immediately preceding the eligibility date.” *Id.* at 1326. The formula also excludes any employees if they were “terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.” *Id.* The party challenging the ballot has the burden to demonstrate the voter is ineligible. *Id.*

III. THE EMPLOYER’S EXCEPTIONS

The Employer filed exceptions to the Hearing Officer’s recommendations concerning the ballots of Lara and Banegas. In its brief, the Employer argues that both individuals were ineligible to vote under the *Daniel/Steiny* formula.

A. The Employer’s Exception to Lara’s Ballot

The Employer takes exception to the Hearing Officer’s recommendation to overrule its challenge to Lara’s ballot. The Hearing Officer found that the Employer failed to meet its burden to establish that Lara voluntarily quit prior to the completion of the last job for which he was employed. Hearing Officer’s Report at 5. The Hearing Officer determined that Lara completed the first phase of the Employer’s job at Laurel High School in Laurel, Maryland on or about June 2, 2017. Shortly before the second phase was to begin on June 19, 2017, Lara’s former foreman, Jose Santos (“Santos”), called Lara to see if he would return to work for the Employer. Lara informed Santos he had not been working because of health issues, which

caused him to be hospitalized. Santos instructed Lara to contact him when he was able to work again. The Hearing Officer found that there was no evidence that Lara had a reasonable expectation of working the second phase of the Laurel High School job, or even that he was aware of the second phase of the job until Santos contacted him shortly before the job began. *Id.*

The Hearing Officer further found that Margot Aguilar (“Aguilar”), an administrative assistant for the Employer, contacted Lara in July 2017 to offer him work. Lara told Aguilar that he was undergoing medical treatment and could not work the job. Aguilar told Lara to contact the Employer when Lara was ready to work again. The Hearing Officer again found no evidence to support the contention that Lara had a reasonable expectation of working the job Aguilar offered, or that the Employer had a reasonable expectation that Lara would work that job. *Id.* at 5-6.

The Hearing Officer determined that under *Daniel/Steiny*, the Employer failed to meet its burden to show that Lara manifested a clear intent to quit prior to the completion of the last job for which he was employed. (*Id.* at 6) (citing *Orange Blossom Manor*, 324 NLRB 846, 847 (1997.)) Instead, the Hearing Officer found that a preponderance of the evidence supported a finding that Lara finished phase one of the Laurel High School job without any knowledge of, or expectation to work, phase two, and therefore completed his last job. The Hearing Officer also determined that Lara never indicated he was quitting his employment, or that he would not return to work for the Employer in the future. The Hearing Officer relied in part on the testimony of Santos and Aguilar, indicating they told Lara to call the Employer once he was prepared to return to work. Based on the record, the Hearing Officer concluded that the Employer failed to meet its burden to show Lara voluntarily quit his employment with the Employer prior to the completion of his last job. Hearing Officer’s Report at 6.

The Employer claims the Hearing Officer's analysis erred in two separate ways. First, the Employer claims that the Hearing Officer erred in finding that Lara had not quit his employment when the evidence showed Lara refused work in June and July of 2017, refused to call the Employer for work, and was never called by the Employer for work again. Employer's Brief In Support of Exceptions⁶ at 8-11. Second, the Employer claims that the Hearing Officer erred when he relied on evidence that Santos and Aguilar instructed Lara to call the Employer when Lara was ready to return to work. The Employer claims this fact is not probative of whether Lara quit, but only of whether he was eligible for rehire for the Employer. *Id.* at 11.

B. The Employer's Exception to Banegas' Ballot

The Employer also takes exception to the Hearing Officer's recommendation to overrule the Employer's challenge to Banegas' ballot. The Hearing Officer found that, after making necessary assumptions caused by gaps in the Employer's own documentary evidence, the preponderance of the evidence established that Banegas worked at least the requisite 45 days during the two-year eligibility period (2016 and 2017). Hearing Officer's Report at 7. In making his determination, the Hearing Officer relied on two assumptions: (1) that with the exception of one day of work in July 2017 where she earned \$15.84 per hour, Banegas earned \$14 per hour; and (2) that each work day was eight hours long. *Id.*

In order to calculate how many days Banegas worked, the Hearing Officer started with Banegas' gross salary as reported on her W-2 for 2016 and 2017, and then deducted earnings from the days the parties stipulated Banegas worked. The Hearing Officer also deducted any earnings from days where the record indicated Banegas did not work exclusively for the Employer, but was "leased" out to another employer, such as Rath Enterprises ("Rath"), Retro

⁶ Citations hereinafter appear as "Emp. Brief In Support of Exceptions".

Environmental (“Retro”), and CC Construction. After making those deductions from her gross salary, the Hearing Officer divided the result by \$14 per hour, and then by eight hours a day. He then added that number to the number of stipulated days to determine how many days Banegas worked. Using this formula, the Hearing Officer determined that Banegas worked 46 days (rounded up) during the requisite 24-month eligibility period. *Id.* at 7-8.

The Employer claims that the Hearing Officer erred in four different ways in his finding that Banegas worked 46 days. First, the Employer claims that when deducting Banegas’ wages earned from Retro in 2017, he erroneously deducted six days’ of earnings instead of eight days in his calculations, which resulted in an incorrectly high amount of remaining wages earned from the Employer. Emp. Brief In Support of Exceptions at 5. The Employer further claims that the Hearing Officer erred when he ignored timesheet evidence showing that on two days in August 2017, Banegas worked a 10-hour day and a 15-hour day. By instead crediting Banegas with only eight-hour days, the Employer claims the Hearing Officer’s calculation again resulted in a higher amount of remaining wages used to determine the number of days Banegas worked. *Id.* at 6.

The Employer also claims that the Hearing Officer erred in calculating Banegas’ 2016 earnings by excluding 11 days of Banegas’ earnings from Rath, instead of the ten days she actually worked for Rath. *Id.* at 6-7. Finally, the Employer claims that the Hearing Officer ignored six days in which Banegas worked in excess of eight hours a day, and instead erroneously used only eight-hour days in his calculations. (*Id.*) By the Employer’s calculation, Banegas only worked 43 days during the 24-month eligibility period, and therefore, she was ineligible to vote in the election. (*Id.* at 7-8.)

IV. ANALYSIS

For the reasons set forth below, I overrule the challenge to Lara's ballot, and therefore direct that it be opened and counted. I sustain the challenge to Banegas' ballot.

A. Carlos Lara

I find no merit to the Employer's exception to the Hearing Officer's recommendation to overrule the challenge to Lara's ballot. The Employer failed to meet its burden to show that Lara voluntarily quit.

The party challenging the ballot must demonstrate the voter expressed a clear intent to quit before the election. *See St. Joseph Ambulance Service*, 346 NLRB 1311, 1315 (2006) (uncontroverted testimony established that two employees unambiguously resigned their positions in order to enter paramedic training programs prior to the election and were ineligible to vote); *Dakota Fire Protection, Inc.*, 337 NLRB 92, 93 (2001) (employee that submitted a clear and unambiguous resignation letter and stopped working before the election was ineligible to vote); *Town Concrete Pipe*, 259 NLRB 1002 (1982) (employee on medical leave of absence did not voluntarily quit). The Employer failed to make that showing here. The Hearing Officer correctly found that there was insufficient evidence to show that Lara unambiguously manifested his intent to quit before the election. Instead, in two calls with representatives of the Employer, Lara said only that he could not work the following day or on an upcoming project because he was – at that moment – seeking medical treatment for a medical issue. Nor did Santos' or Aguilar's testimony indicate that they interpreted Lara's response to be a resignation; to the contrary, both told Lara to call the Employer once he was ready to return to work. Tr. 87:15-88:4; 144:24-145:14.

This is in contrast to the record evidence about Olvin Burgos, who told Aguilar that he no longer wanted to work for the Employer because he had a new job and was working somewhere else, which Aguilar understood to be a resignation. Tr. 44:2-46:19 (Aguilar told Santos that Burgos “didn’t want to be relocated” to another jobsite because “[h]e said he didn’t want to work with us anymore...he no longer wanted to work with us and that he was working somewhere else.”); *id.* at 143:8-145:14 (Aguilar called Burgos to ask him to work, “and he said no, because he was working for another company...He said no, I’m with another company now, thank you” and noting that if she calls an employee about a job and the individual tells her he is with another company, she will no longer call him to offer him work.)) Lara made no such representation to Santos or Aguilar, only indicating his inability to work on the particular days they offered.

I agree with the Hearing Officer’s conclusion that the evidence is insufficient to meet the Employer’s burden, and that its challenge to Lara’s ballot should be overruled.

B. Herminia Banegas

I find merit to the Employer’s exceptions to the Hearing Officer’s recommendation to overrule the challenge to Banegas’ ballot. While the Hearing Officer used the correct methodology to best determine how many days Banegas worked, I find that he made some miscalculations that affected the final calculation. After revising those calculations, I find that Banegas worked only 42 days during the eligibility period, making her ineligible to vote.

To determine the number of days Banegas worked for the Employer, the Hearing Officer correctly started with Banegas’ gross pay from 2017 (\$3,351.22), and subtracted her earnings from Retro from her total gross pay.⁷ Pet. Exh. 2 at 1. The record evidence shows that Banegas

⁷ The parties stipulated on the record that Banegas worked for Retro for eight days in 2017, and those days were not to be included in the determination of her voting eligibility. Tr. 20:24-22:9; 22:16-25:16; Hearing Officer’s Report at 3, n. 1.

worked eight days for Retro, and eight hours on each of those days. Emp. Exh. 2 at 1-8. By subtracting eight days of earnings at \$14 per hour, eight hours a day (8 days x \$14 per hour x 8 hours a day), the total amount deducted should have been \$896.00. However, the Hearing Officer deducted only \$672.00.⁸ Subtracting \$896.00 in Retro earnings from the \$3,351.22 in gross earnings, the correct remaining amount is \$2,455.22.

From the corrected remainder of \$2,455.22, the next step is to subtract the value of Banegas' wages from the day she earned \$15.84 (\$15.84 per hour x 8 hours = \$126.72); as well as the value of an additional day she did not work directly for the Employer, but instead worked for CC Construction (\$14 per hour x 8 hours = \$112). The result is then (\$2,455.22 - \$126.72 - \$112.00=) \$2,216.50.

At this point in his calculations, the Hearing Officer assumed that Banegas worked only eight-hour days, and therefore divided the remainder by \$14 per hour and eight hours a week. However, I find merit to the Employer's claim that the Hearing Officer erred in making that assumption, when the record evidence shows that on two workdays in 2017, Banegas worked more than eight hours.

On August 15 and August 16, 2017, the timesheets in the record show Banegas worked 10 hours and 15 hours, respectively. Emp. Exh. 1 at 11-12. Therefore, the Hearing Officer should have deducted (\$14 per hour x 10 hours = \$140.00) and (\$14 per hour x 15 hours = \$210.00) from the \$2,216.50 before dividing the remainder by \$14 per hour and 8 hours a day: (\$2,216.50 - \$140.00 - \$210.00) \$1,866.50. That number, divided by \$14 per hour and 8 hours a day (\$1,866.50 / \$14 per hour / 8 hours) is 17 days (rounded up from 16.67). Adding back in the

⁸ It appears that the Hearing Officer's inadvertently used six days in his calculations instead of eight days. Hearing Officer's Report at 7.

one day Banegas earned \$15.84, and the two days she worked more than eight hours directly for the Employer, the resulting number of days Banegas worked in 2017 is 20.⁹

Finally, I find merit to the Employer's claim that the Hearing Officer also miscalculated the number of days Banegas worked in 2016. In deducting the days Banegas worked for Retro or Rath in 2016, the Hearing Officer erroneously deducted 11 days of earnings when the record evidence shows she worked for Rath for only ten days.¹⁰ (Tr. 35:8-21; Emp. Exh. 4 at 23-32.) Correcting this error, Banegas' earnings for work directly and solely for the Employer was \$2,709.00, or her gross earnings (\$3,829.00),¹¹ less her earnings from Rath (\$14 an hour x 8 hours a day x 10 days).

The Hearing Officer also erred in assuming that this remainder of Banegas' earnings were earned working only eight-hour days, when the record evidence shows that she worked 11 hours on July 5, 2016 (Emp. Ex. 3 at 1); 10 hours on July 7, 8, 11, and 13, 2016 (Emp. Ex. 3 at 3-5, 7); and 11.5 hours on July 12, 2016 (Emp. Ex. 3 at 6), totaling 62.5 hours. As in the calculations for 2017, the total amount of earnings from these days should have been deducted from the earnings remainder of \$2,709.00 before dividing the remainder by \$14 per hour and eight hours a day. The correct calculation is therefore: $\$2,709.00 - (\$14 \text{ per hour} \times 62.5 \text{ hours})$, equaling \$1,834.00. Dividing that remainder of \$1,834.00 by \$14 per hour and eight hours a day, the correct number of remaining days is 16 (rounded down from 16.38). Adding the six

⁹ The Employer incorrectly added back in the day that Banegas worked for CC Construction instead of the day that she earned \$15.84 an hour. Emp. Brief In Support of Exceptions at 6. Because both represent a single day, the error does not affect the final calculation.

¹⁰ There is no evidence in the record that Banegas worked for Retro in 2016.

¹¹ The Employer incorrectly used gross earnings of \$3,859.00 instead of the correct \$3,829.00 in its calculations. (Emp. Brief In Support of Exceptions at 7.)

days in which Banegas worked more than eight hours for the Employer to the 16-day remainder results in a total of 22 days for 2016.

Based on these revised calculations, the total number of days Banegas could have worked for the Employer during the 24-month eligibility period is (20 + 22=) 42 days. Accordingly, under *Daniel/Steiny*, Banegas is ineligible to vote. I therefore sustain the Employer's challenge to her vote.

V.DECISION ON EXCEPTIONS

In sum, I adopt the Hearing Officer's recommendation to overrule the challenge to Carlos Lara's ballot and direct that his ballot be opened and counted. As for the other remaining challenged ballot, I do not adopt the Hearing Officer's recommendation to overrule the challenge to Herminia Banegas' ballot, and find her ineligible to vote.

VI.DIRECTION TO OPEN AND COUNT CHALLENGED BALLOT

IT IS HEREBY DIRECTED that the ballot of Carlos Lara be opened and counted on a date to be set at least 15 days from the date of this Decision and Direction on Challenges. Thereafter, a revised tally of ballots shall be prepared and served on the parties, and an appropriate certification shall issue.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 and 102.69(c)(2) of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the

August 13, 2018

election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland, this 13th day of August 2018.

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center, Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

D & H Demolition, LLC
Employer

and

Construction and Master Laborers' Local Union 11, Affiliated With
Laborers' International Union of North America
Petitioner

Case No. 05-RC-183865

Date Issued 09/10/2018

TYPE OF ELECTION: (Check one:)

Consent Agreement

Stipulation

Board Direction

RD Direction

(Also check box below where appropriate)

8(b) (7)

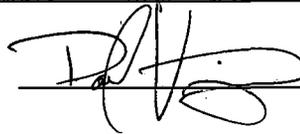
SECOND REVISED TALLY OF BALLOTS
(Counting of Challenged Ballots)

The undersigned agent of the Regional Director certifies that the results of counting the challenged ballots directed to be counted by the Acting Regional Director on 08/13/2018, and the addition of these ballots to the Revised Tally of Ballots executed on 04/06/2018, were as follows:

	Revised Tally	Challenged Ballots Counted	Final Tally
Approximate number of eligible voters	23		
Number of Void ballots	0	0	0
Number of Votes cast for <u>PETITIONER</u>	0	1	1
Number of Votes cast for _____		-	-
Number of Votes cast for _____		-	-
Number of Votes cast against participating labor organization(s)	0	0	0
Number of Valid votes counted			1
Number of undetermined challenged ballots	11		0
Number of Valid votes counted plus challenged ballots	11		1
Number of Sustained challenges (voters ineligible)			10

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are (not) sufficient to affect the results of the election. A majority of the valid votes plus challenged ballots as shown in the Final Tally column has (not) been cast for Construction and Master Laborers' Local Union 11, Affiliated With Laborers' International Union of North America

For the Acting Regional Director



The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that this counting and tabulating, and the compilation of the Final Tally, were fairly and accurately done, and that the results were as indicated above. We also acknowledge service of this Tally.

For EMPLOYER
E. A. [Signature]

For _____

For PETITIONER
[Signature]

For _____

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D & H Demolition, LLC Employer and Construction and Master Laborers' Local Union 11, Affiliated with Laborers' International Union of North America Petitioner	Case 05-RC-183865
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TYPE OF ELECTION: STIPULATED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

Construction and Master Laborers' Local Union 11, Affiliated with Laborers' International Union of North America

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Unit: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area; excluding employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.



September 18, 2018

Nancy Wilson, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center – Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

Attachment: Notice of Bargaining Obligation

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,¹ an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

D & H Demolition, LLC)	
Employer)	
)	
and)	Case 05-RC-183865
)	
Construction and Master)	
Laborers Local Union 11)	
)	
Petitioner)	

D & H DEMOLITION, LLC'S REQUEST FOR REVIEW OF DECISION AND DIRECTION ON CHALLENGES

D & H Demolition, LLC, (the “Company” or “D & H”) by its attorneys Eckert Seamans, LLC and pursuant to Sections 102.67 and 102.69 (c)(2) of the Rules and Regulations of the National Labor Relations Board, as amended, hereby files its request for review of the Decision and Direction on Challenges (“DDC”) in the above-referenced matter issued by Acting Regional Director for Region five on August 13, 2018.¹ If the Acting Regional Director is upheld, a single challenged voter, who was excluded from the election eligibility list, who had declined assignment to work twice and who made no attempt to contact the Company in the 10 months between his last day of work and the election will determine the representation status of the bargaining unit employees.

The grounds for this request for review are:

1. That the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the Company’s rights.
2. That a substantial question of law is raised because the Regional Director’s finding that the Company had failed to establish that challenged voter Carlos Lara had quit his employment and was ineligible to vote under the *Steiny/Daniel* construction industry eligibility formula constitutes a departure from officially reported Board precedent.

¹ A copy of the DDC is attached as Attachment 1. Excerpts of the official transcript of the hearing are attached as Attachment 2. References to the transcript pages shall be made as “(TR ___)”.

3. That there are compelling reasons for the Board to reconsider and redefine the *Steiny/Daniel* formula's treatment of employees who terminate their employment.

BACKGROUND

The Company is a construction industry employer. The election in this matter was conducted on March 7, 2018. The revised Tally of Ballots showed that zero votes had been cast for and zero votes against the Petitioner and that there were 11 determinative challenges.(DDC at p. 2) Following a hearing, the Hearing Officer, on May, 10, 2018, issued a Report on Challenged Ballots in which he sustained the challenges to 9 of the voters, but found voters Herminia Banegas and Carlos Lara eligible to vote under the *Steiny/Daniel* eligibility formula.² D & H filed exceptions to the Hearing Officer's Report with the Regional Director of Region 5. On August 13, 2018 the Acting Regional Director issued his Decision and Direction on Challenges. The Acting Regional Director reversed the Hearing Officer as to voter Banegas, finding that she failed to work the requisite number of hours under the *Steiny-Daniel* formula.³ He adopted the Hearing Officer's recommendation to overrule the challenge to challenged voter Lara on the grounds that Lara had not voluntarily terminated his employment prior to the completion of his last job worked and was therefore an eligible voter under the *Steiny/Daniel* formula. The Acting Regional Director ordered that Lara's ballot be opened and counted. It is to the finding that Lara is an eligible voter that D & H excepts.

² See, *Daniel Construction Company, Inc.*, 133 NLRB 264 (1961) (as modified in *Daniel Construction Company, Inc.*, 167 NLRB 1078 (1967))and *Steiny & Company*, 308 NLRB 1323 (1992).

³ Lara's ballot was challenged by the Board because he was not on the election eligibility list. All other persons to cast ballots were likewise challenged for not being on the list and all have been found to be ineligible. See Attachment 1, DDC at p. 2.

SUMMARY OF ARGUMENT

This matter involves the voting eligibility of Carlos Lara, the *only* voter in the election who has not been found ineligible to vote. The Acting Regional Director found Lara eligible under the *Steiny/Daniel* eligibility formula, concluding that D & H had failed to establish that Lara had expressed a clear intention to quit before the election (DDC at p. 9)⁴ In doing so, the Acting Regional Director relied on erroneous factual findings and rejected evidence which, taken as a whole, establishes that Lara did not intend to return to work and clearly voluntarily terminated his employment. This evidence includes the fact that 1) on Lara's last day of work on Friday his supervisor instructed him to call to be assigned his next job and Lara did not do so 2) when called the following Sunday by his supervisor for the purpose of him being assigned to another job on the next Monday, Lara declined, claiming illness 3) when later called by the Company's administrative assistant to direct him to report the following day, Lara again refused the assignment, claiming illness 4) despite having been twice told to call when able to work, Lara *never called the Company in the ten months between his last day of work in June 2017 and the election* and 5) the Company never again called Lara after his second refusal of an assignment.

In concluding that Lara's communications to the Company had not "unambiguously manifested" his intent to quit before the election, (DCC at p. 9) the Acting Regional Director ignored established Board precedent that a termination of employment does not have to be communicated but can be found from surrounding circumstances. Specifically, the Acting Regional Director erred in failing to find that Lara's refusal of two separate job assignments based on asserted illness, when coupled with his ignoring, for ten months, the Company's

⁴ It is undisputed that Lara had worked the requisite number of days under the formula.

directive to call when he was able to return to work and further coupled with the lack of any Company attempt to again call Lara, clearly shows that Lara chose to terminate, and the Company treated him as having been terminated, whatever employment relationship he could have claimed to have had with the Company.

The Acting Regional Director also misapplied Board precedent to the extent he relied on the fact that Lara, when twice declining employment, was told to call the Company when he was able to return. (DDC at 9). Under the *Steiny/Daniel* formula, voting eligibility does not turn on expectancy of re-employment once an employee ceases working. Rather, the *Steiny/Daniel* formula substitutes a test based on days worked in the preceding 12 or 24 months for the traditional “reasonable expectancy of employment” test for determining the eligibility of laid off employees. Under *Steiny/Daniel*, the sole inquiry is whether or not the employee ceases working as a result of the conclusion of the particular project upon which he/she is employed. If so, the employee’s eligibility is determined by the number of days worked in the applicable period. If not, then the employee has either been discharged for cause or has voluntarily resigned.

To the extent the Regional Director relied on the Hearing Officer’s finding that Lara’s last day of work was the last day of the project phase upon which he had been working, there is a compelling reason for the Board to reconsider the *Steiny/Daniel* requirement that an employee who works the requisite number of days is eligible unless he/she is discharged for cause or voluntarily quits *before the end of the last project on which he/she is employed*. In this case, while Lara’s last day of work was the last day of the project phase, Lara was not being laid off but was being moved to another project, an assignment he refused. He later refused the Company’s next attempt to assign him and then never called the Company as instructed. In such circumstances, Lara should not be viewed as an employee whose employment was terminated

involuntarily by lay off (the type of employee the *Steiny/Daniel* formula addresses) but one who left the employment of the Company on his own initiative and ignored the opportunity to return. In this regard and for the purposes of the policy underlying the *Steiny/Daniel* formula, there should be no difference between an employee who quits his/her employment before the end of the last project upon which he/she is employed and an employee who quits after that project but before the election. Accordingly, the Board should modify the *Steiny/Daniel* formula to provide that an employee who voluntarily quits employment before the election is ineligible regardless of whether he/she does so before or after his/her last project. Finally, the Board should modify the *Steiny/Daniel* formula to find ineligible any employee whose active employment ends by reason other than lay off due to the completion of a project.

FACTS

The Acting Regional Director adopted the following findings of fact made by the Hearing Officer. Carlos Lara was working in June 2017 on a project at Laurel High School (TR 87) and that the first phase of the project ended on June 2. The second phase of the Laurel High School project commenced on or about June 19 and shortly before that, D & H supervisor Jose Santos called Lara “to see if he was working” (TR 86-88)⁵ and Lara told Santos that he was not working because he had a health issue and was in the hospital. (DDC at pp. 5-6; TR 88) Santos told Lara to call him or the office when he was ready. (DDC at pp. 5-6; TR 88) Lara was also

⁵ Contrary to this finding, Santos never testified that he called Lara “shortly” before second phase of the job. He only confirmed that he called before the start of the second phase (TR 91) and actually testified that he called Lara on the Sunday or Monday following the completion of the first phase on June 2 (TR 92). Santos also testified that, on the Friday that the first phase finished, he told Santos, “to call me or call the office for the next job” (TR 88) and that he called Lara on Sunday or Monday to “ask him what he was doing. I see will see people out of work and I put them to work”. (TR 91-92) and that he calls the office to see if there is a position available. Thus, contrary to the Acting Regional Director, the preponderance of the evidence is that, on the Sunday or Monday following the conclusion of the first phase of Laurel High School project, Santos called Lara for the purpose of placing him at another jobsite.

called in July⁶ by Margo Aguilar, the D & H Administrative Assistant, who calls employees for work and gives them their schedules. (DDC at p. 6; TR 105; 112; 141) Aguilar called Lara as directed by her superior to “tell him to come back to work”, that she had a job for him. (TR 113; 142). The job was for the following day. (TR 142)⁷ Lara refused, telling Aguilar that he was sick and was “undergoing some treatment or exams”. (TR 113). Aguilar then told Lara to call her when he got better. (DDC at p. 6; TR 113; 143). The second phase of the Laurel High School project began on June 19, 2017. Lara was not employed on that work. The unrebutted testimony is that Lara never called either Santo or Aguilar. (TR 88; 113). Lara has not been called for work since Aguilar’s call and Lara has not worked for D & H since June of 2017.(TR 143).

ARGUMENT

I. The Acting Regional Director erroneously found that Lara had not quit his employment.

The Acting Regional Director incorrectly found that Carlos Lara had not voluntarily quit his employment prior to the election and misapplied Board law in doing so. First the Acting Regional Director wrongly held that that it was necessary for Lara to have “expressed a clear intent to quit” before the election. In so finding, Acting Regional Director noted that, in declining further employment prospects to Santos and declining employment to Aguilar, Lara told both that he could not work because of a medical issue and that he was having tests done. He also relied on the fact that, when so told by Lara, both Santos and Aguilar told Lara to call when he wanted to return. The Acting Regional Director thus concluded that Lara had not “unambiguously manifested his intent to quit before the election”. (DDC at p. 9)

⁶ While the Hearing Officer found this call to take place in July (TR 112), Aguilar also testified that the call was in June. (TR 141).

⁷ Given such testimony, the Acting Regional Director’s finding (DDC at p. 6) that neither Lara nor the Company had an expectancy that Lara would work another job is inexplicable. Lara was clearly being called in order to put him to work.

In finding that Lara had not quit, the Acting Regional Director erroneously ignored the undisputed fact that Lara unambiguously *declined* employment. Moreover, even assuming that Lara was being truthful when stating that he had a medical condition and was having tests, the Acting Regional Director erroneously ignored the un rebutted evidence that, having declined employment by claiming inability to come to work, Lara never, *as instructed*, called D & H for the purpose of returning to employment for 8 months and never otherwise contacted D & H. In addition, it is undisputed that D & H never again attempted to contact Lara. Thus the fact that Lara never attempted to return and never returned to employment with D & H can only be found to be caused by Lara's own election not to call D & H. Under such facts, it can only be concluded that Lara chose not to attempt to return to D & H and abandoned his employment. The same facts establish that D & H considered Lara to be terminated. Contrary to the Acting Regional Director, a finding that Lara quit his employment by declining work and then never contacting D & H does not require that Lara affirmatively expressed an intent to quit to D & H. Rather, the Board has held that a finding that employment has terminated can be made from surrounding circumstances. As the Board stated in *J.C. Penny*, 347 NLRB 127 (2006):

“Affirmative termination can be found even in the absence of any formal or informal communication, in instances where the surrounding circumstances make clear that the employment relationship has ended.” *Air Liquide America Corp.*, 324 NLRB 661, 663–664 (1997) (citing *Cavert Acquisition Co. v. NLRB*, 83 F.3d 598, 607 (3d Cir. 1996))

When as in this case, an employee, eight months prior to an election, refuses work, or refuses to subsequently call for work, is never again called for work, the circumstances make clear that the employee has quit his employment prior to the election. In this regard, the Acting Regional Director's reliance on *Town Concrete Pipe*, 259 NLRB 1002 (1982) is misplaced.

There is no evidence that Lara requested or was granted any sort of leave or even that D & H has

a policy of allowing leaves. Moreover, there is no evidence even to support a finding that Lara was being truthful when he told D & H that he was unable to work due to some illness and/or the need to undergo medical testing.⁸ Most significant, in failing to call or attempt to return for 8 months it is clear that Lara exceed whatever leave he could claim to have been granted and the fact that D & H made no attempt to contact him after June 2017 establishes its determination that he was no longer employed.⁹

In finding Lara eligible, the Acting Regional Director also erred in relying on the fact that Lara had been told by both Santos and Aguilar to call when he was ready to return to work. Apart from the fact that Lara never did call, the fact that D & H considered or even continues to consider Lara eligible for rehire does not alter the fact that he quit and that his status as an employee ended. It is Lara's refusal of work and his decision not to return to D & H which determines his status. Thus, Lara's employment is no less "terminated" than that of an employee who submits a resignation letter but is told he can come back when he desires. Moreover, whether Lara had an opportunity or expectancy of being reemployed is *irrelevant* under the *Steiny/Daniel* formula because the formula is a total substitution for the traditional "reasonable expectancy of employment" test which applies to employers outside the construction industry. To consider the expectancy, possibility or probability of Lara being working again for D & H is to engage in the very "individualized determination" of voting eligibility that the *Steiny/Daniel* formula eschews.¹⁰ Thus, under the formula an employee who quits is ineligible despite the fact

⁸ Lara was not called to testify by the Petitioner. To the extent that the Petitioner would argue that Lara remained in D & H's employ because he was granted a medical or some other leave, it was incumbent upon Petitioner to establish that Lara was in fact, ill and that Lara requested and was granted such a leave.

⁹ That D & H did not include Lara on the eligibility is consistent with its determination that he had quit his employment.

¹⁰ The formula is "an easily ascertainable, short hand and predictable method of enabling the Board expeditiously to determine eligibility by adopting 'a period of time which will likely insure eligibility to the greatest number of employees having a substantial interest in the choice of representative.'" *Steiny & Company*, 308 NLRB 1323 (1992) at 1326 (quoting *Alabama Drydock Co.*, 5 NLRB 149, 156 (1938)). Had Lara merely refused work due to

that he/she may be considered eligible for rehire. Further, accordingly, the challenge to the ballot of Carlos Lara must be sustained.

II. The Board should modify the *Steiny/Daniel* formula to exclude any voter who is discharged or whose active employment ends prior to the election by any means other than lay off at the conclusion of a project.

In regard to the policies underlying the *Steiny/Daniel* formula, there is no qualitative or substantive difference between an employee who voluntarily quits his/her employment prior to the completion of his/her last project and the employee who quits prior to commencement of, or who refuses, his/her next assignment. It simply defies logic to conclude that an employee who submits a letter of resignation on the last day of a construction project is ineligible but that an employee who submits a similar letter on the day after the end of the project remains eligible as a laid off employee. It is the act of terminating employment by means other than lay off which renders the employee ineligible to vote. It should matter not when that termination occurs provided that it occurs prior to the election. Thus, to the extent the *Steiny/Daniel* formula can be interpreted otherwise, the Board should clarify the formula to hold ineligible those who quit employment prior to the election.

Moreover, the purpose of the *Steiny/Daniel* formula is to avoid individualized determinations of voter eligibility based on expectancy of re-employment by presuming that “laid off” employees remain eligible to vote provided they have met the applicable days-of-work thresholds. Given the nature of employment in the construction industry, it is only employees who are so laid off who can be viewed to have an expectancy of recall. Accordingly, to assess

his medical issues but had not been told to call when he was ready to return, it cannot seriously be contended that he would not be viewed as having terminated his employment. Moreover, the purposes underlying the formula are better served by finding ineligible any employee who ceases active employment for any reason other than layoff at the conclusion of a project. Lara ceased active employment by refusing to seek reassignment and then refusing offered work.

voting eligibility of any employee whose employment ceases by any reason other than lay off occasioned by the completion of a project is to require the very type of individual assessment of eligibility which the Acting Regional Director undertakes and which the *Steiny/Daniel* formula eschews. The sole inquiry here should be whether Lara's employment terminated because he was laid off at the conclusion of the first phase of the Laurel School Project. The record shows otherwise – that Lara was not laid off but that his employment terminated because he refused to be assigned to his next project. Accordingly, Lara should be found ineligible to vote.

CONCLUSION

For the above reasons, the Board should grant review of the DDC, reverse the Regional Director's finding that Lara was an eligible voter and direct that a certification of results of the election be issued.

Respectfully submitted,



Edward R. Noonan

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2018 a true and correct copy of the foregoing Request for Review of Decision and Direction on Challenges was filed electronically with the office of the Regional Director for Region 5 and was served by electronic mail upon the following:

Brian J. Petruska, Esq
LIUNA Mid-Atlantic Organizing Coalition
One Freedom Square
11951 Freedom Drive, Suite 310
Reston, VA 20190
bpetruska@maliuna.org

A handwritten signature in black ink, appearing to read "Edward R. Warner", is written over a horizontal line.

ATTACHMENT 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

D & H DEMOLITION, LLC

Employer

and

Case 05-RC-183865

CONSTRUCTION AND MASTER
LABORERS' LOCAL UNION 11,
AFFILIATED WITH LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA

Petitioner

DECISION AND DIRECTION ON CHALLENGES

On September 8, 2016, Construction and Master Laborers' Local Union 11, affiliated with Laborers' International Union of North America ("the Petitioner") filed the petition in this matter seeking to represent certain employees of D & H Demolition, LLC ("the Employer"). Pursuant to a stipulated election agreement executed by the parties, an election was conducted on March 7, 2018¹ under the supervision of the Acting Regional Director among certain employees of the Employer,² with the following results:

¹ All dates herein are in 2018, unless specified otherwise.

² The secret-ballot election was held for the following unit: "Including: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area who were employed by the Employer during the payroll period ending December 30, 2017. Excluding: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act. Also eligible

Approximate number of eligible voters	23
Number of void ballots	0
Number of votes cast for the Petitioner	0
Number of votes cast against participating labor organizations	0
Number of valid votes counted	0
Number of challenged ballots	12
Number of valid votes counted plus challenged ballots	12

Challenges are sufficient in number to affect the results of the election.³
(Bd. Exh. 1-E.)

Subsequent to March 7, the parties resolved one of the challenged ballots, and, on April 6, a revised tally of ballots (“Revised Tally of Ballots”) issued with the following results:

Approximate number of eligible voters	23
Number of void ballots	0
Number of votes cast for the Petitioner	0
Number of votes cast against participating labor organizations	0
Number of valid votes counted	0
Number of challenged ballots	11
Number of valid votes counted plus challenged ballots	11
Number of Sustained challenges (<i>voters ineligible</i>)	1

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are sufficient to affect the results of the election.

Bd. Exh. 1-F.

to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.” Hearing Officer’s Report at 1-2.

³ In this decision, citations to the hearing transcript appear as “Tr. [page numbers].” Citations to the Employer’s exhibits appear as “Emp. Exh. [exhibit number],” citations to Petitioner’s exhibits appear as “Pet. Exh. [exhibit number],” and citations to Board exhibits appear as “Bd. Exh. [exhibit number].”

Thus, on April 9, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, the Acting Regional Director ordered a hearing for the purpose of receiving evidence to resolve the issues raised by the challenged ballots.⁴ Bd. Exh. 1-H.

The hearing took place on April 24 and 25 in Baltimore, Maryland, and the designated Hearing Officer heard testimony and received into evidence relevant documents. *Id.* The parties were permitted to file post-hearing briefs. Tr. at 184:25-185:20.

On May 10, the Hearing Officer issued a Report and Recommendations on Challenged Ballots in which he made the following recommendations: (1) to sustain the Employer's challenges to the ballots of Olvin Burgos, Silvia Garcia, Iris Perez, Nery Vasquez, Aracelis Cruz, Ever Flores, Walter Vasquez, Felipa Cardenas, and David Gutierrez; (2) to overrule the Employer's challenge to the ballot of Carlos Lara ("Lara"); and (3) to overrule the Employer's challenge to the ballot of Herminia Banegas ("Banegas"). Hearing Officer's Report at 3.

On May 24, the Employer timely filed exceptions and a brief in support of its exceptions to the Hearing Officer's Report. The Petitioner did not file exceptions or an answering brief to the Employer's exceptions.

I have reviewed the record in light of the exceptions and brief, and I adopt the Hearing Officer's findings and recommendations to the extent it is consistent with this Decision. Except where noted below, I find the Hearing Officer's rulings made at hearing are free from prejudicial error and are hereby affirmed. Specifically, I adopt the Hearing Officer's recommendation to overrule the challenge to Lara's ballot. I do not adopt the Hearing Officer's recommendation to overrule the challenge to Banegas' ballot, finding instead that the challenge should be sustained.

⁴ No party filed objections to the conduct of the election or to conduct affecting the results of the election.

I. THE CHALLENGES

There are 11 determinative challenged ballots reflected on the Revised Tally of Ballots. As noted above, I have adopted the Hearing Officer's recommendation to sustain the challenges to the ballots of Burgos, Cardenas, Cruz, Flores, Garcia, Gutierrez, Perez, N. Vasquez, and W. Vasquez.⁵ The names of the remaining challenged voters, the party challenging each voter, and that party's reason for doing so, are as follows:

NAME	CHALLENGER	REASON
Herminia Banegas	Employer	Lacks requisite number of working days under <i>Daniel/Steiny</i> formula
Carlos Lara	Employer	Voluntarily quit prior to completion of last job

II. THE DANIEL/STEINY FORMULA

The Board uses the *Daniel/Steiny* formula to determine construction industry employees' eligibility to vote in a Board-run election. *Daniel Construction Company, Inc.*, 133 NLRB 264, 267 (1961), modified 167 NLRB 1078, 1079 (1967), reaff'd. and further modified in *Steiny & Co.*, 308 NLRB 1323, 1326 (1992). The parties stipulated to the use of that formula in this election. Bd. Exh. 1-D at 2.

In articulating the rationale for using this formula, the Board noted that the "construction industry is different from many other industries in the way it hires and lays off employees...construction employees may experience intermittent employment, be employed for short periods on different projects, and work for several different employers during the course of a year." *Steiny*, 308 NLRB at 1324 (noting the intermittent, "fluctuating nature and

⁵ Neither party filed exceptions to the Hearing Officer's recommendations to sustain the Employer's challenges to those nine ballots.

unpredictable duration nature of employment” in the construction industry) (internal citations omitted).

Under the *Daniel/Steiny* formula, “in addition to those eligible to vote under the standard criteria, unit employees are eligible if they have been employed for 30 days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment in those 12 months and have been employed for 45 days or more within the 24-month period immediately preceding the eligibility date.” *Id.* at 1326. The formula also excludes any employees if they were “terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.” *Id.* The party challenging the ballot has the burden to demonstrate the voter is ineligible. *Id.*

III. THE EMPLOYER’S EXCEPTIONS

The Employer filed exceptions to the Hearing Officer’s recommendations concerning the ballots of Lara and Banegas. In its brief, the Employer argues that both individuals were ineligible to vote under the *Daniel/Steiny* formula.

A. The Employer’s Exception to Lara’s Ballot

The Employer takes exception to the Hearing Officer’s recommendation to overrule its challenge to Lara’s ballot. The Hearing Officer found that the Employer failed to meet its burden to establish that Lara voluntarily quit prior to the completion of the last job for which he was employed. Hearing Officer’s Report at 5. The Hearing Officer determined that Lara completed the first phase of the Employer’s job at Laurel High School in Laurel, Maryland on or about June 2, 2017. Shortly before the second phase was to begin on June 19, 2017, Lara’s former foreman, Jose Santos (“Santos”), called Lara to see if he would return to work for the Employer. Lara informed Santos he had not been working because of health issues, which

caused him to be hospitalized. Santos instructed Lara to contact him when he was able to work again. The Hearing Officer found that there was no evidence that Lara had a reasonable expectation of working the second phase of the Laurel High School job, or even that he was aware of the second phase of the job until Santos contacted him shortly before the job began. *Id.*

The Hearing Officer further found that Margot Aguilar (“Aguilar”), an administrative assistant for the Employer, contacted Lara in July 2017 to offer him work. Lara told Aguilar that he was undergoing medical treatment and could not work the job. Aguilar told Lara to contact the Employer when Lara was ready to work again. The Hearing Officer again found no evidence to support the contention that Lara had a reasonable expectation of working the job Aguilar offered, or that the Employer had a reasonable expectation that Lara would work that job. *Id.* at 5-6.

The Hearing Officer determined that under *Daniel/Steiny*, the Employer failed to meet its burden to show that Lara manifested a clear intent to quit prior to the completion of the last job for which he was employed. (*Id.* at 6) (citing *Orange Blossom Manor*, 324 NLRB 846, 847 (1997.)) Instead, the Hearing Officer found that a preponderance of the evidence supported a finding that Lara finished phase one of the Laurel High School job without any knowledge of, or expectation to work, phase two, and therefore completed his last job. The Hearing Officer also determined that Lara never indicated he was quitting his employment, or that he would not return to work for the Employer in the future. The Hearing Officer relied in part on the testimony of Santos and Aguilar, indicating they told Lara to call the Employer once he was prepared to return to work. Based on the record, the Hearing Officer concluded that the Employer failed to meet its burden to show Lara voluntarily quit his employment with the Employer prior to the completion of his last job. Hearing Officer’s Report at 6.

The Employer claims the Hearing Officer's analysis erred in two separate ways. First, the Employer claims that the Hearing Officer erred in finding that Lara had not quit his employment when the evidence showed Lara refused work in June and July of 2017, refused to call the Employer for work, and was never called by the Employer for work again. Employer's Brief In Support of Exceptions⁶ at 8-11. Second, the Employer claims that the Hearing Officer erred when he relied on evidence that Santos and Aguilar instructed Lara to call the Employer when Lara was ready to return to work. The Employer claims this fact is not probative of whether Lara quit, but only of whether he was eligible for rehire for the Employer. *Id.* at 11.

B. The Employer's Exception to Banegas' Ballot

The Employer also takes exception to the Hearing Officer's recommendation to overrule the Employer's challenge to Banegas' ballot. The Hearing Officer found that, after making necessary assumptions caused by gaps in the Employer's own documentary evidence, the preponderance of the evidence established that Banegas worked at least the requisite 45 days during the two-year eligibility period (2016 and 2017). Hearing Officer's Report at 7. In making his determination, the Hearing Officer relied on two assumptions: (1) that with the exception of one day of work in July 2017 where she earned \$15.84 per hour, Banegas earned \$14 per hour; and (2) that each work day was eight hours long. *Id.*

In order to calculate how many days Banegas worked, the Hearing Officer started with Banegas' gross salary as reported on her W-2 for 2016 and 2017, and then deducted earnings from the days the parties stipulated Banegas worked. The Hearing Officer also deducted any earnings from days where the record indicated Banegas did not work exclusively for the Employer, but was "leased" out to another employer, such as Rath Enterprises ("Rath"), Retro

⁶ Citations hereinafter appear as "Emp. Brief In Support of Exceptions".

Environmental (“Retro”), and CC Construction. After making those deductions from her gross salary, the Hearing Officer divided the result by \$14 per hour, and then by eight hours a day. He then added that number to the number of stipulated days to determine how many days Banegas worked. Using this formula, the Hearing Officer determined that Banegas worked 46 days (rounded up) during the requisite 24-month eligibility period. *Id.* at 7-8.

The Employer claims that the Hearing Officer erred in four different ways in his finding that Banegas worked 46 days. First, the Employer claims that when deducting Banegas’ wages earned from Retro in 2017, he erroneously deducted six days’ of earnings instead of eight days in his calculations, which resulted in an incorrectly high amount of remaining wages earned from the Employer. Emp. Brief In Support of Exceptions at 5. The Employer further claims that the Hearing Officer erred when he ignored timesheet evidence showing that on two days in August 2017, Banegas worked a 10-hour day and a 15-hour day. By instead crediting Banegas with only eight-hour days, the Employer claims the Hearing Officer’s calculation again resulted in a higher amount of remaining wages used to determine the number of days Banegas worked. *Id.* at 6.

The Employer also claims that the Hearing Officer erred in calculating Banegas’ 2016 earnings by excluding 11 days of Banegas’ earnings from Rath, instead of the ten days she actually worked for Rath. *Id.* at 6-7. Finally, the Employer claims that the Hearing Officer ignored six days in which Banegas worked in excess of eight hours a day, and instead erroneously used only eight-hour days in his calculations. (*Id.*) By the Employer’s calculation, Banegas only worked 43 days during the 24-month eligibility period, and therefore, she was ineligible to vote in the election. (*Id.* at 7-8.)

IV. ANALYSIS

For the reasons set forth below, I overrule the challenge to Lara's ballot, and therefore direct that it be opened and counted. I sustain the challenge to Banegas' ballot.

A. Carlos Lara

I find no merit to the Employer's exception to the Hearing Officer's recommendation to overrule the challenge to Lara's ballot. The Employer failed to meet its burden to show that Lara voluntarily quit.

The party challenging the ballot must demonstrate the voter expressed a clear intent to quit before the election. *See St. Joseph Ambulance Service*, 346 NLRB 1311, 1315 (2006) (uncontroverted testimony established that two employees unambiguously resigned their positions in order to enter paramedic training programs prior to the election and were ineligible to vote); *Dakota Fire Protection, Inc.*, 337 NLRB 92, 93 (2001) (employee that submitted a clear and unambiguous resignation letter and stopped working before the election was ineligible to vote); *Town Concrete Pipe*, 259 NLRB 1002 (1982) (employee on medical leave of absence did not voluntarily quit). The Employer failed to make that showing here. The Hearing Officer correctly found that there was insufficient evidence to show that Lara unambiguously manifested his intent to quit before the election. Instead, in two calls with representatives of the Employer, Lara said only that he could not work the following day or on an upcoming project because he was – at that moment – seeking medical treatment for a medical issue. Nor did Santos' or Aguilar's testimony indicate that they interpreted Lara's response to be a resignation; to the contrary, both told Lara to call the Employer once he was ready to return to work. Tr. 87:15-88:4; 144:24-145:14.

This is in contrast to the record evidence about Olvin Burgos, who told Aguilar that he no longer wanted to work for the Employer because he had a new job and was working somewhere else, which Aguilar understood to be a resignation. Tr. 44:2-46:19 (Aguilar told Santos that Burgos “didn’t want to be relocated” to another jobsite because “[h]e said he didn’t want to work with us anymore...he no longer wanted to work with us and that he was working somewhere else.”); *id.* at 143:8-145:14 (Aguilar called Burgos to ask him to work, “and he said no, because he was working for another company...He said no, I’m with another company now, thank you” and noting that if she calls an employee about a job and the individual tells her he is with another company, she will no longer call him to offer him work.)) Lara made no such representation to Santos or Aguilar, only indicating his inability to work on the particular days they offered.

I agree with the Hearing Officer’s conclusion that the evidence is insufficient to meet the Employer’s burden, and that its challenge to Lara’s ballot should be overruled.

B. Herminia Banegas

I find merit to the Employer’s exceptions to the Hearing Officer’s recommendation to overrule the challenge to Banegas’ ballot. While the Hearing Officer used the correct methodology to best determine how many days Banegas worked, I find that he made some miscalculations that affected the final calculation. After revising those calculations, I find that Banegas worked only 42 days during the eligibility period, making her ineligible to vote.

To determine the number of days Banegas worked for the Employer, the Hearing Officer correctly started with Banegas’ gross pay from 2017 (\$3,351.22), and subtracted her earnings from Retro from her total gross pay.⁷ Pet. Exh. 2 at 1. The record evidence shows that Banegas

⁷ The parties stipulated on the record that Banegas worked for Retro for eight days in 2017, and those days were not to be included in the determination of her voting eligibility. Tr. 20:24-22:9; 22:16-25:16; Hearing Officer’s Report at 3, n. 1.

worked eight days for Retro, and eight hours on each of those days. Emp. Exh. 2 at 1-8. By subtracting eight days of earnings at \$14 per hour, eight hours a day (8 days x \$14 per hour x 8 hours a day), the total amount deducted should have been \$896.00. However, the Hearing Officer deducted only \$672.00.⁸ Subtracting \$896.00 in Retro earnings from the \$3,351.22 in gross earnings, the correct remaining amount is \$2,455.22.

From the corrected remainder of \$2,455.22, the next step is to subtract the value of Banegas' wages from the day she earned \$15.84 (\$15.84 per hour x 8 hours = \$126.72); as well as the value of an additional day she did not work directly for the Employer, but instead worked for CC Construction (\$14 per hour x 8 hours = \$112). The result is then (\$2,455.22 - \$126.72 - \$112.00=) \$2,216.50.

At this point in his calculations, the Hearing Officer assumed that Banegas worked only eight-hour days, and therefore divided the remainder by \$14 per hour and eight hours a week. However, I find merit to the Employer's claim that the Hearing Officer erred in making that assumption, when the record evidence shows that on two workdays in 2017, Banegas worked more than eight hours.

On August 15 and August 16, 2017, the timesheets in the record show Banegas worked 10 hours and 15 hours, respectively. Emp. Exh. 1 at 11-12. Therefore, the Hearing Officer should have deducted (\$14 per hour x 10 hours = \$140.00) and (\$14 per hour x 15 hours = \$210.00) from the \$2,216.50 before dividing the remainder by \$14 per hour and 8 hours a day: (\$2,216.50 - \$140.00 - \$210.00) \$1,866.50. That number, divided by \$14 per hour and 8 hours a day (\$1,866.50 / \$14 per hour / 8 hours) is 17 days (rounded up from 16.67). Adding back in the

⁸ It appears that the Hearing Officer's inadvertently used six days in his calculations instead of eight days. Hearing Officer's Report at 7.

one day Banegas earned \$15.84, and the two days she worked more than eight hours directly for the Employer, the resulting number of days Banegas worked in 2017 is 20.⁹

Finally, I find merit to the Employer's claim that the Hearing Officer also miscalculated the number of days Banegas worked in 2016. In deducting the days Banegas worked for Retro or Rath in 2016, the Hearing Officer erroneously deducted 11 days of earnings when the record evidence shows she worked for Rath for only ten days.¹⁰ (Tr. 35:8-21; Emp. Exh. 4 at 23-32.) Correcting this error, Banegas' earnings for work directly and solely for the Employer was \$2,709.00, or her gross earnings (\$3,829.00),¹¹ less her earnings from Rath (\$14 an hour x 8 hours a day x 10 days).

The Hearing Officer also erred in assuming that this remainder of Banegas' earnings were earned working only eight-hour days, when the record evidence shows that she worked 11 hours on July 5, 2016 (Emp. Ex. 3 at 1); 10 hours on July 7, 8, 11, and 13, 2016 (Emp. Ex. 3 at 3-5, 7); and 11.5 hours on July 12, 2016 (Emp. Ex. 3 at 6), totaling 62.5 hours. As in the calculations for 2017, the total amount of earnings from these days should have been deducted from the earnings remainder of \$2,709.00 before dividing the remainder by \$14 per hour and eight hours a day. The correct calculation is therefore: \$2,709.00 - (\$14 per hour x 62.5 hours), equaling \$1,834.00. Dividing that remainder of \$1,834.00 by \$14 per hour and eight hours a day, the correct number of remaining days is 16 (rounded down from 16.38). Adding the six

⁹ The Employer incorrectly added back in the day that Banegas worked for CC Construction instead of the day that she earned \$15.84 an hour. Emp. Brief In Support of Exceptions at 6. Because both represent a single day, the error does not affect the final calculation.

¹⁰ There is no evidence in the record that Banegas worked for Retro in 2016.

¹¹ The Employer incorrectly used gross earnings of \$3,859.00 instead of the correct \$3,829.00 in its calculations. (Emp. Brief In Support of Exceptions at 7.)

days in which Banegas worked more than eight hours for the Employer to the 16-day remainder results in a total of 22 days for 2016.

Based on these revised calculations, the total number of days Banegas could have worked for the Employer during the 24-month eligibility period is (20 + 22=) 42 days. Accordingly, under *Daniel/Steiny*, Banegas is ineligible to vote. I therefore sustain the Employer's challenge to her vote.

V. DECISION ON EXCEPTIONS

In sum, I adopt the Hearing Officer's recommendation to overrule the challenge to Carlos Lara's ballot and direct that his ballot be opened and counted. As for the other remaining challenged ballot, I do not adopt the Hearing Officer's recommendation to overrule the challenge to Herminia Banegas' ballot, and find her ineligible to vote.

VI. DIRECTION TO OPEN AND COUNT CHALLENGED BALLOT

IT IS HEREBY DIRECTED that the ballot of Carlos Lara be opened and counted on a date to be set at least 15 days from the date of this Decision and Direction on Challenges. Thereafter, a revised tally of ballots shall be prepared and served on the parties, and an appropriate certification shall issue.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 and 102.69(c)(2) of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the

August 13, 2018

election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland, this 13th day of August 2018.

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center, Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

ATTACHMENT 2

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1 AFTERNOON SESSION
 2 (Time Noted: 1:29 p.m.)
 3 HEARING OFFICER KEOUGH: Back on the record.
 4 Go ahead, Mr. Noonan, do you have your next witness?
 5 MR. NOONAN: Yes. The Employer calls Jose Santos.
 6 HEARING OFFICER KEOUGH: If you'll ask Mr. Santos to
 7 come up here? I first want to swear in our regional
 8 interpreter. If you'll announce your name, please?
 9 THE INTERPRETER: Grace Piazza Ortiz, P-i-a-z-z-a
 10 O-r-t-i-z.
 11 (Whereupon,
 12 GRACE PIAZZA ORTIZ
 13 was duly sworn to interpret the questions from English to
 14 Spanish and the answers from Spanish into English to the best
 15 of her knowledge and ability.)
 16 HEARING OFFICER KEOUGH: Thank you. Sir, if you will
 17 please take the seat, and if you will state your name and
 18 spell it for the record?
 19 THE WITNESS: Jose H. Santos.
 20 HEARING OFFICER KEOUGH: Oh, you reminded me, I have to
 21 swear him in.
 22 (Whereupon,
 23 JOSE H. SANTOS,
 24 was called as a witness by and on behalf of the Employer and,
 25 after having been duly sworn through the Interpreter, was

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1 examined and testified, as follows:)
 2 HEARING OFFICER KEOUGH: Sit down. And if you'll just
 3 please state your name and spell your name for the record?
 4 THE WITNESS: Jose H. Santos, J-o-s-e, H. Santos,
 5 S-a-n-t-o-s.
 6 HEARING OFFICER KEOUGH: And, Ms. Ortiz, if you'll let
 7 him know that we don't amplify, that we just record so he'll
 8 have to speak up.
 9 COURT REPORTER: Tell him to sit forward, come closer to
 10 the --
 11 HEARING OFFICER KEOUGH: If you'll sit -- move in a
 12 little bit.
 13 Mr. Noonan, your witness.
 14 DIRECT EXAMINATION
 15 Q. BY MR. NOONAN: Good afternoon, Mr. Santos. How are
 16 you?
 17 A. Good afternoon.
 18 Q. By whom are you employed, Mr. Santos?
 19 A. D & H Demolition.
 20 Q. What's your job title? What do you do for them?
 21 A. I'm like a foreman or a supervisor.
 22 Q. And how long have you worked for D & H?
 23 A. Around 5 years.
 24 Q. Now, do you know a Carlos Lara?
 25 A. Yes. He worked with me.

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1 Q. Was he employed in about June of 2007 -- I'm sorry, '17,
 2 2017?
 3 A. Yes.
 4 Q. Okay. And do you recall a job, Laurel High School?
 5 A. Yes.
 6 Q. And what were you doing at Laurel High? Did you work on
 7 the Laurel High School job?
 8 A. Yes.
 9 Q. And what were you doing?
 10 A. The job was demolition. Carlos Lara was there on that
 11 job with me.
 12 Q. Next question -- I'm sorry, did you have any role
 13 supervising or directing the people?
 14 A. Yes.
 15 Q. Did there come a time on that job when Mr. Lara stopped
 16 working?
 17 A. Yes.
 18 Q. And do you recall, did you have any conversations with
 19 Mr. Lara about that?
 20 A. Yes.
 21 Q. Could you tell the Hearing Officer how that came about,
 22 what happened?
 23 A. We were working, and then I called him. It was on a
 24 Friday. I talked to him. We finished that place. And I
 25 told him to call me or call the office for the next job.

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1 Later I talked to him, and I asked him if he was working.
 2 And he said no, because he had a health issue and he was in
 3 the hospital. And I told him that when he was ready, to call
 4 me or call the office.
 5 Q. Did he ever call you?
 6 A. No.
 7 Q. Did he ever call the office?
 8 A. I don't know.
 9 Q. Did he ever work again for D & H?
 10 A. Not with me.
 11 Q. When did you return to Laurel High School?
 12 A. I think on the 19th of the same month.
 13 Q. The 19th of the same month, the work continued?
 14 A. Yes.
 15 Q. Was Carlos Lara there working?
 16 A. No.
 17 Q. Did he ever work again on the Laurel High School job?
 18 A. No, not that I know of.
 19 MR. NOONAN: Thank you, Mr. Santos. Nothing further.
 20 Don't go anywhere.
 21 HEARING OFFICER KEOUGH: Cross, Mr. Petruska?
 22 MR. PETRUSKA: Sure.
 23 CROSS-EXAMINATION
 24 Q. BY MR. PETRUSKA: Good afternoon, Mr. Santos.
 25 A. Good afternoon.

1 Q. My name is Brian Petruska. I'm the attorney for
 2 Local 11. I just have some questions about the testimony you
 3 just gave. All right, approximately from what day -- from
 4 what date to what date did D & H work on the Laurel High
 5 School job?
 6 A. I don't know the exact date, but it was about a week or
 7 2 weeks.
 8 Q. Do you know what month it was in?
 9 A. In June.
 10 Q. Of 2017?
 11 A. May and June, yes, 2017.
 12 Q. Okay. And your recollection is the job was about 1 or 2
 13 weeks?
 14 A. Yes. I was there a couple of days because I went from
 15 that job to another job. Carlos sometimes stayed there. I
 16 will tell him what they were supposed to do.
 17 Q. Okay. But the job was 1 or 2 weeks long?
 18 A. I don't remember the exact dates. I remember when it
 19 ended the phase and then when we came back.
 20 Q. You remember when it ended what?
 21 A. The first phase.
 22 Q. Okay. So it had phases?
 23 A. Yes, two phases.
 24 Q. Okay. And were both phases in May and June of 2017?
 25 A. Yes.

1 Q. Okay. How long in between the phases?
 2 A. We came back on the 19th.
 3 Q. Of May or June?
 4 A. June.
 5 Q. Okay. You came back on the 19th of June for the second
 6 phase?
 7 A. Yes.
 8 Q. Yes, okay. And do you know how much time there was
 9 between the end of the first phase and the beginning of the
 10 second phase?
 11 A. The first phase ended on the 2nd. And then we came on
 12 June 19th.
 13 HEARING OFFICER KEOUGH: Ms. Ortiz, if you would just
 14 remind the witness that he should speak up.
 15 COURT REPORTER: It's fine. The transcript will be in
 16 English.
 17 Q. BY MR. PETRUSKA: Did Mr. Lara work on the first phase?
 18 A. Yes.
 19 Q. And did he work for the entire first phase?
 20 A. Yes. Maybe there are some days he didn't go, but yes.
 21 Q. So when the first phase ended, he was still working?
 22 A. Yes.
 23 Q. And if I understand your testimony, you're saying he did
 24 not return to the second phase; is that right?
 25 A. No, that's right.

1 Q. Okay. And you called him the Friday before the
 2 beginning of the second phase?
 3 A. Yes, before the second phase.
 4 Q. And he told you he was in the hospital?
 5 A. Yes. He told me he was in the hospital.
 6 Q. Okay. And then you worked the second phase of the
 7 Laurel, of the Laurel High School.
 8 A. Yes. I went there on the 19th. Sometimes I'm not there
 9 every day.
 10 Q. Okay. And but you did see him on the second phase of
 11 the Laurel High School job?
 12 A. No.
 13 Q. And you haven't seen him -- he hasn't worked with you at
 14 D & H since then? That's your testimony?
 15 A. Not that I remember.
 16 Q. Okay. Just for clarity, the second phase you said was
 17 what, a couple of weeks long?
 18 A. Two or three days.
 19 Q. Two or three days long.
 20 A. Yes.
 21 MR. PETRUSKA: Okay. All right, that's all I have.
 22 HEARING OFFICER KEOUGH: Do you have any redirect?
 23 MR. NOONAN: Yes.
 24 REDIRECT EXAMINATION
 25 Q. BY MR. NOONAN: When you called Mr. Lara on the phone,

1 why were you calling him?
 2 A. I was looking on my phone, and I decided to call him to
 3 see what he was doing.
 4 Q. What jobs were available for him at that time?
 5 HEARING OFFICER KEOUGH: If any.
 6 Q. BY MR. NOONAN: If any.
 7 A. I don't keep track of the jobs, but I asked him what he
 8 was doing. I will see people out of work, and I put them to
 9 work.
 10 Q. What was your purpose for asking him what he was doing?
 11 A. To ask him where he was working.
 12 Q. This is when he told you he was sick?
 13 A. Yes, that's when he told me he was sick and was in the
 14 hospital.
 15 Q. What was your intent regarding assigning him to a job at
 16 the time you called him?
 17 A. Sometimes I call the employees to see where they are
 18 working. And if they are not working, sometimes I call and
 19 talk in the office to see if there is space for them.
 20 Q. The first phase ended on a -- his last day of work was a
 21 Friday?
 22 A. Yes.
 23 Q. How many days after his last day of work did you call
 24 him?
 25 A. On Sunday or Monday, I don't remember.

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1 P R O C E E D I N G S
2 (Time Noted: 9:49 a.m.)
3 HEARING OFFICER KEOUGH: This resumes the case D & H
4 Demolition, LLC, Case 05-RC-183865. It is still Employer's
5 case. And Employer, Mr. Noonan, will you call your next
6 witness?
7 MR. NOONAN: Employer calls Margot Aguilar.
8 HEARING OFFICER KEOUGH: Okay. Grace? I'm going to
9 have -- I'm going to read Grace in first again. If you would
10 please come up here, Ms. Ortiz? And you will be providing
11 the Interpreter services today; is that correct?
12 THE INTERPRETER: Yes.
13 HEARING OFFICER KEOUGH: Okay. Can you please again
14 state your -- state and spell your name for the record?
15 THE INTERPRETER: Grace Piazza Ortiz, G-r-a-c-e
16 P-i-a-z-z-a O-r-t-i-z.
17 (Whereupon,
18 GRACE PIAZZA ORTIZ
19 was duly sworn to interpret the questions from English to
20 Spanish and the answers from Spanish into English to the best
21 of her knowledge and ability.)
22 HEARING OFFICER KEOUGH: And if you'll sit down. Oh,
23 I'm sorry, no, sorry, raise your right hand.
24 (Whereupon,
25 MARGOT AGUILAR

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1 was called as a witness by and on behalf of the Employer and,
2 after having been duly sworn through the Interpreter, was
3 examined and testified as follows:)
4 HEARING OFFICER KEOUGH: You may take a seat. And if
5 you will have her state and spell her name for the record.
6 THE WITNESS: Margot Aguilar, M-a-r-g-o-t
7 A-g-u-i-l-a-r.
8 HEARING OFFICER KEOUGH: And tell her if she'd like some
9 water or anything, she can help herself.
10 Mr. Noonan, your witness.
11 DIRECT EXAMINATION
12 Q. BY MR. NOONAN: Good morning. Margot, by whom are you
13 employed?
14 A. D & H.
15 Q. Okay. And what is your job at D & H?
16 A. Administrative assistant.
17 Q. Speak up --
18 HEARING OFFICER KEOUGH: If I can just interject? Is
19 Mr. Espinal your representative today?
20 MR. NOONAN: Yes.
21 HEARING OFFICER KEOUGH: Okay. So he's going to remain
22 at the table with you?
23 MR. NOONAN: Yeah.
24 HEARING OFFICER KEOUGH: Okay.
25 Q. BY MR. NOONAN: Where do you work? What location do you

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1 work?
2 A. In the D & H office.
3 Q. D & H office, okay. Are you familiar with a former
4 employee named Herminia Banegas?
5 A. Yes.
6 MR. NOONAN: It's Employer's 6, right?
7 HEARING OFFICER KEOUGH: It would be, yes.
8 (Employer's Exhibit 6 marked for identification.)
9 Q. BY MR. NOONAN: Margot, I just gave you a document.
10 Could you tell me what that document is?
11 A. It is a pay stub.
12 Q. And it has a number of people on it, correct?
13 A. Yes.
14 Q. Let me direct your attention to the entries for Herminia
15 Banegas, which is the second entry down.
16 A. Yes.
17 Q. Now, it says check date, June 30, 2017. Do you see
18 that?
19 A. Yes.
20 Q. Could you tell me what week of work that check date
21 covered?
22 A. From the 18th to the 23rd of June.
23 Q. 18th to the 23rd of June.
24 Q. Okay. And what -- how many hours of work did
25 Ms. Banegas work from the 18th to the 23rd of June 2017?

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1 A. Thirty-two hours.
2 Q. Thirty-two. Four days of work?
3 A. Four days, yes.
4 MR. NOONAN: I'll move Employer's Exhibit 6.
5 MR. PETRUSKA: No objections.
6 HEARING OFFICER KEOUGH: No objections? Employer's
7 Exhibit 6 is received.
8 (Employer's Exhibit 6 received in evidence.)
9 Q. BY MR. NOONAN: Now, are you familiar with Retro
10 Environmental?
11 A. Yes.
12 Q. Are familiar with Rath Enterprises?
13 A. Yes.
14 Q. Now, when a person -- when a D & H employee is sent to
15 work on a Retro job or sent to work on a Rath job, how is his
16 time accounted for?
17 A. The supervisors at each job, they have their list, and
18 they sign them in there. And then they send us to the --
19 they send to the office the records that they have from them.
20 Q. How can you tell a Rath job from a Retro job?
21 A. Because they have their names on the list.
22 Q. And when a D & H job -- when an employee works on a
23 D & H only job, how is his time kept?
24 A. They also sign in on the time sheets of D & H.
25 Q. Okay. And where are those sheets kept by the Company?

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1 Q. What does it show for Herminia Banegas?
 2 A. She worked 1 day here.
 3 Q. One day of the week. And what day was it, 12/22/17?
 4 A. December 22, 2017.
 5 Q. And did you find any other time sheets for Herminia
 6 Banegas for C&C Construction Company?
 7 A. No.
 8 Q. Did you find any time sheets for Olvin Burgos for C&C
 9 Construction Company?
 10 A. No.
 11 Q. Are there any projects in 2016 and 2017 that were not
 12 searched?
 13 A. No. I checked them all.
 14 MR. NOONAN: Move Employer's 6 and 7.
 15 HEARING OFFICER KEOUGH: Any objections?
 16 MR. PETRUSKA: No objections.
 17 HEARING OFFICER KEOUGH: Employer's 6 and 7 are
 18 received. I thought 6 might have already been received, but
 19 if I was wrong, it's received now, and so is 7; 7 is
 20 received.
 21 (Employer's Exhibit 7 received in evidence.)
 22 Q. BY MR. NOONAN: Do you know Carlos Lara?
 23 A. Yes.
 24 Q. Let me direct your attention to July 2017. Did you have
 25 a conversation with Lara concerning his work status?

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1 A. Yes.
 2 Q. Could you tell us why you called? Did you -- how did
 3 that conversation occur on the phone?
 4 A. I called him.
 5 Q. Okay. Why did you call him?
 6 A. To tell him to come back to work.
 7 Q. Okay. And what did he say?
 8 A. He told me no.
 9 Q. Did he say why?
 10 A. Because he was sick and he was undergoing some treatment
 11 or exams.
 12 Q. Okay. And what did you say to him after that?
 13 A. I told him that when he gets better to call me.
 14 Q. Has he called you?
 15 A. No.
 16 MR. NOONAN: Margot, thank you very much.
 17 HEARING OFFICER KEOUGH: Mr. Petruska, do you have
 18 cross-examination?
 19 MR. PETRUSKA: I do.
 20 HEARING OFFICER KEOUGH: If you'll just explain to her
 21 he's going to conduct a cross-examination.
 22 MR. PETRUSKA: Can we go off record?
 23 HEARING OFFICER KEOUGH: We can, off record.
 24 (Off the record from 10:10 a.m. to 10:16 a.m.)
 25 HEARING OFFICER KEOUGH: Back on the record.

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1 Mr. Petruska, your cross-examination.
 2 MR. PETRUSKA: Thank you.
 3 CROSS-EXAMINATION
 4 Q. BY MR. PETRUSKA: Ms. Aguilar, my name is Brian
 5 Petruska. I am counsel to Local 11. I'm going to ask you
 6 some questions about the testimony you just gave. Okay, I've
 7 given you three pieces of paper. Can you find the one that
 8 has been marked P-6?
 9 (Petitioner's Exhibit 6 marked for identification.)
 10 MR. NOONAN: Can I get my copy back?
 11 MR. PETRUSKA: Oh, you gave me all your copies.
 12 Q. BY MR. PETRUSKA: Do you have that in front of you?
 13 A. Yes.
 14 Q. All right. Do you recognize this document?
 15 A. Yes.
 16 Q. Okay. This is a, this is a copy of D & H's payroll; is
 17 that right?
 18 A. Yes.
 19 Q. And do you see it has an entry for Herminia Banegas on
 20 it?
 21 A. Yes.
 22 Q. Okay. And it reports a check date of July 7, 2017; do
 23 you see that?
 24 A. Yes.
 25 Q. And if I understood your testimony that you gave with

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1 Mr. Noonan, this check would have been for the pay period
 2 from the week prior; is that right?
 3 A. Yes.
 4 Q. Okay. So it would have been for the pay period -- do
 5 your pay periods end on Sunday?
 6 A. Saturday.
 7 Q. On Saturday, okay. So that would have been pay period
 8 ending July 1; does that seem right?
 9 A. Yes.
 10 Q. Okay. July 1, I'll represent to you and the Hearing
 11 Officer can take judicial notice, July 1 of 2017 was a
 12 Saturday. Okay. Does this document fairly and accurately
 13 reflect the hours that D & H paid Ms. Banegas for her work?
 14 A. Yes.
 15 MR. PETRUSKA: I'll move for the entry of P-6.
 16 MR. NOONAN: No objection.
 17 HEARING OFFICER KEOUGH: Petitioner's Exhibit 6 is
 18 received.
 19 (Petitioner's Exhibit 6 received in evidence.)
 20 MR. NOONAN: Let me just get my exhibits back.
 21 MR. PETRUSKA: Oh, could you -- could you keep them up
 22 there?
 23 MR. NOONAN: You want --
 24 MR. PETRUSKA: Yeah. I'm going to -- I have some
 25 questions.

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1 on through somebody else.
 2 HEARING OFFICER KEOUGH: Do you have any recross?
 3 MR. PETRUSKA: I don't.
 4 HEARING OFFICER KEOUGH: All right, so I have some
 5 questions. So in light of my questions, any redirect from my
 6 questions or your questions will be based on what we hear
 7 now. Okay?
 8 MR. PETRUSKA: Sure.
 9 HEARING OFFICER KEOUGH: All right. Tell Ms. Aguilar I
 10 thank her for her appearance today. Where do you physically
 11 work? What location do you work?
 12 THE WITNESS: In the D & H office.
 13 HEARING OFFICER KEOUGH: Is that in Glen Burnie?
 14 THE WITNESS: Yes.
 15 HEARING OFFICER KEOUGH: That's Glen Burnie, Maryland?
 16 THE WITNESS: Yes.
 17 HEARING OFFICER KEOUGH: How long have you been working
 18 for D & H?
 19 THE WITNESS: Five years.
 20 HEARING OFFICER KEOUGH: So what is your current
 21 position?
 22 THE WITNESS: Administrative assistant.
 23 HEARING OFFICER KEOUGH: And how long have you held that
 24 job for D & H?
 25 THE WITNESS: Five years.

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1 HEARING OFFICER KEOUGH: And can you just generally
 2 describe your job duties for us?
 3 THE WITNESS: I call the people. I gave them the
 4 schedule. I do payroll.
 5 HEARING OFFICER KEOUGH: You call what people?
 6 THE WITNESS: The employees that are going to work.
 7 HEARING OFFICER KEOUGH: And how does she know who to
 8 call?
 9 THE WITNESS: Because we have their numbers of the
 10 people that working for us.
 11 HEARING OFFICER KEOUGH: So if there is a job, how do
 12 you -- if you learn that there is going to be a job and that
 13 there's labor, how do you know who, or how do you decide who
 14 to call?
 15 THE WITNESS: My boss tells me.
 16 HEARING OFFICER KEOUGH: And who is your boss?
 17 THE WITNESS: Hessler Espinal or Manuel Espinal.
 18 HEARING OFFICER KEOUGH: So it's the decision of Hessler
 19 or Manuel Espinal to determine who they would like to call
 20 for a job?
 21 THE WITNESS: Yes.
 22 HEARING OFFICER KEOUGH: Earlier you testified that you
 23 had spoken with Carlos Lara in June 2017. Do you recall that
 24 testimony?
 25 THE WITNESS: Yes.

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1 HEARING OFFICER KEOUGH: How did you know to call
 2 Mr. Lara?
 3 THE WITNESS: Because he is an employee of the Company.
 4 HEARING OFFICER KEOUGH: But there are I thought --
 5 okay, so did either Hessler or Manuel Espinal tell her to
 6 call Mr. Lara?
 7 THE WITNESS: Yes, Manuel told me.
 8 HEARING OFFICER KEOUGH: And that was to call for
 9 Mr. Lara in June 2017?
 10 THE WITNESS: Yes.
 11 HEARING OFFICER KEOUGH: And do you know why did you --
 12 did you tell Mr. Lara -- well, why don't you tell me again
 13 what it is that you and Mr. Lara spoke about.
 14 THE WITNESS: I told him that we had a job for him and
 15 asked him if he could work. And he said that he couldn't
 16 because he was sick and he was going to have some tests done.
 17 HEARING OFFICER KEOUGH: Did you tell him what the job
 18 was?
 19 THE WITNESS: It was for the following day.
 20 HEARING OFFICER KEOUGH: The following day, okay. Prior
 21 to the call, did Mr. Lara -- do you know -- strike that.
 22 Do you recall what the job was?
 23 THE WITNESS: Demolition.
 24 HEARING OFFICER KEOUGH: And do you know where or what
 25 jobsite?

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1 THE WITNESS: In Washington.
 2 HEARING OFFICER KEOUGH: Have you since called Mr. Lara
 3 for jobs?
 4 THE WITNESS: No.
 5 HEARING OFFICER KEOUGH: Why not?
 6 THE WITNESS: Because he said he would call me when he
 7 gets better, and he never called me.
 8 HEARING OFFICER KEOUGH: Does she -- ask her if she
 9 knows who Olvin Burgos is.
 10 THE WITNESS: Yes.
 11 HEARING OFFICER KEOUGH: How do you know Mr. Burgos?
 12 THE WITNESS: I call him to go work.
 13 HEARING OFFICER KEOUGH: Ask her if she knows when the
 14 last -- if she knows the last time she called Mr. Burgos.
 15 THE WITNESS: September 2017.
 16 HEARING OFFICER KEOUGH: Why was that the last call to
 17 Mr. Burgos, September 2017?
 18 THE WITNESS: I call him to ask him to work, and he said
 19 no, because he was working for another company.
 20 HEARING OFFICER KEOUGH: At the time you called
 21 Mr. Burgos in September of 2017, was he already working for
 22 D & H? Was he working for D & H at the time of the call, or
 23 was he already working for the other company?
 24 THE WITNESS: He said, no, I'm with another company now,
 25 thank you.

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

IN RE:

D&H DEMOLITION, LLC

Employer, and

Case 05-RC-183865

**CONSTRUCTION AND MASTER
LABORERS' LOCAL UNION 11,
LIUNA,**

Petitioner.

**PETITIONER'S OPPOSITION TO
EMPLOYER'S REQUEST FOR REVIEW**

The Petitioner, Construction and Master Laborers' Local Union 11, affiliated with the Laborers' International Union of North America, (hereinafter, the "Union" or "Local 11"), files this Opposition to the Employer, D&H Demolition, LLC's request for review.¹

The Board should deny the Employer's request for review because the acting Regional Director's determination that Carlos Lara did not voluntarily quit the Employer prior to the conclusion of the last project on which he was employed was supported by substantial evidence and not clearly erroneous. The Employer's second argument, that the Board should alter the *Daniel/Steiny* doctrine, is barred by the Employer's Stipulated Election Agreement. In the Stipulated Election Agreement, the Employer expressly agreed to the following standard for defining voter eligibility: "employees meeting either of those criteria [above] who were terminated for cause or *who quit voluntarily prior to the completion of the last job for which*

¹ This opposition is timely under NLRB Rules and Regulation 102.67(f), which specifies that any opposition to a request for review should be submitted seven days after the last date for filing a request for review. The certification in this case issued on September 18, 2018. Under Rule 102.67(c), the last day to file a timely request for review was October 2, 2018. Seven days after October 2, 2018 is October 9, 2018.

they were employed, are not eligible.” See Stipulated Election Agreement (attached hereto as Exhibit A).² Having so stipulated, the Employer waived its right to request that the Board overturn the Regional Director’s Decision based upon a different standard. Because there is no evidence in the record supporting the conclusion that Lara intended to quit his employment at all, much less prior to his last project, the Acting Regional Director’s decision should be upheld and this request for review should be denied.

STATEMENT OF THE ISSUES

1. Did D&H demonstrate that Carlos Lara, who otherwise is an eligible voter, voluntarily quit prior to completing the last project on which he was employed?
2. Is D&H precluded from arguing for a different standard of voter eligibility due to its waiver of the argument in the parties’ Stipulated Election Agreement?

FACTS

A post-election hearing was held on April 24 and 25, 2018. At the hearing, evidence was given with respect to eleven contested voters who submitted ballots in the underlying election, but were not included on the voter eligibility list. Following the evidence adduced at the hearing, the Union continued to advocate for the eligibility only of Carlos Lara and Herminia Banegas. The Acting Regional Director found that Lara was eligible but that Banegas was not. Shortly thereafter, ballots were tallied with the result that the Union prevailed in the election.

The facts adduced at the hearing with respect to Lara’s eligibility follows.

² Because the election in this matter was re-run, there are two Stipulated Election Agreements, both of which are included in Exhibit A. The first is dated September 18, 2016, the second is dated April 25, 2017.

A. Carlos Lara

The Employer stipulated that Mr. Lara worked a sufficient number of days to be eligible. The sole basis advanced by the Employer for not counting Mr. Lara's vote was that he voluntarily quit. In support of this contention, D&H offered testimony from two witnesses: Jose Santos, and D&H supervisor, and Margot Aguilar, an administrative assistant employed by D&H.

Mr. Santos testified that he last worked with Mr. Lara in May 2017 on Phase 1 of the Laurel High School project. Mr. Lara completed the work on Phase 1, and was laid off with the other D&H employees. Tr. 90: 11-25. Immediately before Phase 2 of the Laurel High School project started, Mr. Santos called Mr. Lara to see if he was available to work on Phase 2. Tr. 87:23-88:4. Mr. Lara responded that he was in the hospital and was not available to work on the project. Mr. Santos told Mr. Lara that when he was ready he should call the office to see if there is a position available. Mr. Santos has not personally worked with Mr. Lara since. *Id.*

Margot Aguilar testified that, in her role as an administrative assistant for D&H, she frequently calls workers to tell them of employment opportunities with D&H. Ms. Aguilar testified that in July 2017 she called Mr. Lara to offer him a position on a D&H Project that started the following day. Mr. Lara responded that he was sick and unavailable to work the following day. Ms. Aguilar told Mr. Lara to call the office back when he is available to work. To Ms. Aguilar's knowledge, Mr. Lara has not called the office back since that time.

DEFINITION OF ELIGIBLE VOTERS

All of the voters who submitted ballots in this election were not employed by the Employer on the eligibility date. Therefore, the following section of the definition of the eligible voters from the Stipulated Election Agreement in this proceeding is relevant:

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

See Ex. A (attached hereto).

ARGUMENT

I. IN THE STIPULATED ELECTION AGREEMENT, D&H DEMOLITION WAIVED ITS RIGHT TO ARGUE FOR ANY DIFFERENT STANDARD FOR VOTER ELIGIBILITY.

The exception in the *Daniel/Steiny* formula for voluntary quits or discharges for cause provides that a potential voter only will be ineligible if “those employees ... had been terminated for cause or quit voluntarily *prior to the completion of the last job for which they were employed.*” *Steiny & Co., Inc.*, 308 NLRB 1323, 1326 (1992) (emphasis added). This standard was incorporated word-for-word into the parties’ Stipulated Election Agreement as the agreed-upon standard for voter eligibility, and the Employer agreed to it.

Now, however, the Employer is asking the Board to adopt a different standard that would render ineligible any voter who expressed an intent to quit after the completion of the last job on which they were employed *but before* the next job on which they were asked to work. Simply stated, if the Employer wanted to preserve its right to argue for a different eligibility standard, it should not have entered into the Stipulated Election Agreement. The Employer, however, *did stipulate* to the standard of eligibility that it now attacks, and therefore it waived its right to request a different standard in this proceeding. Because the Employer’s argument to adopt a different standard for voter eligibility conflicts with the Stipulated Election Agreement, this argument is waived and should be rejected.

II. MR. LARA’S BALLOT SHOULD BE COUNTED BECAUSE D&H FAILED TO PROVE THAT HE VOLUNTARILY QUIT BEFORE COMPLETING THE LAST PROJECT FOR WHICH HE WAS EMPLOYED.

Under longstanding Board law, the party challenging a ballot must demonstrate that the voter expressed a clear intent to quit before the election. *St. Joseph Ambulance Serv.*, 346 NLRB 1311, 1315 (2006). Here, the evidence is clear that Mr. Lara did not quit “prior to the completion of the last job for which they were employed.” *Id.* Instead, the testimony from Mr. Santos makes clear that Mr. Lara worked on Phase 1 of the Laurel High School project until Phase 1 was completed, and the D&H employees were laid off. Tr. 90: 11-25.

Moreover, both Mr. Santos and Ms Aguilar made clear that, in D&H’s view, Mr. Lara was welcome to return to work with D&H, and no witness testified that Lara ever said or suggested that he would not return to the D&H in the future. Instead, the evidence only shows that they offered him work in June and July of 2017, and he was unable to accept the new assignments at that time because he was sick. This is not evidence of an employee quitting. At most, it is evidence of an employee temporarily unavailable for assignments. But it was D&H Demolition’s burden to affirmatively demonstrate that Lara voluntarily resigned. D&H obviously failed to carry this burden, and Acting Regional Director’s finding to this effect was proper.

A meritorious request for review requires a demonstration that the Regional Director’s factual findings were “clearly erroneous.” D&H has plainly failed to meet this burden. Accordingly, D&H’s request for review should be denied.

CONCLUSION

Based upon the foregoing, D&H's request for review should be denied.

October 9, 2018

Respectfully submitted,

/s/Brian J. Petruska

Brian J. Petruska

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General Counsel

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing OPPOSITION TO REQUEST FOR REVIEW was served on the parties identified below by Electronic Mail:

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/s/Brian J. Petruska
Brian J. Petruska

Exhibit A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

D & H Demolition, LLC

Case 05-RC-183865

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, D & H Demolition, LLC, a limited liability corporation with an office and principle place of business in Glen Burnie, Maryland, Employer's facility, is engaged in the business of performing demolition and asbestos removal. During the 12-month period ending August 31, 2016, the Employer, in conducting its operations described herein, purchased and received at its Glen Burnie, Maryland facility and Maryland jobsites goods valued in excess of \$50,000 directly from points outside the State of Maryland.

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Thursday, October 13, 2016, ballots will be mailed to voters from the National Labor Relations Board, Region 05 Resident Office, 1015 Half Street SE, Washington, DC 20570-0001. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, October 20, 2016, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Resident Office at (202)208-3000 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 05 Resident Office on Thursday, November 3, 2016, at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 05 Resident Office prior to the counting of the ballots.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area; excluding employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees,

Initials: _____

confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending September 16, 2016**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote by mail as described above in paragraph 4.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by Construction and Master Laborers' Local Union 11, affiliated with Laborers' International Union of North America?" The choices on the ballot will be "Yes" or "No"

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the

Initials: _____

Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: David Henriquez, Operations Manager; 889 Airport Park Road, Suite C, Glen Burnie, Maryland, 21061; david.dhdemo@gmail.com; facsimile number: 410-761-0018.

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

**CONSTRUCTION AND MASTER
LABORERS' LOCAL UNION 11,
AFFILIATED WITH LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA**

(Petitioner)

D & H DEMOLITION, LLC

(Employer)

By /s/ Edward R. Noonan 9/16/16
(Name) (Date)

By /s/ Brian J. Petruska 9/16/16
(Name) (Date)

Recommended: /s/ Ximena P. Molano 9/16/16
XIMENA P. MOLANO, Field Examiner
(Date)

Date approved: September 19, 2016

/s/ Charles L. Posner

**Regional Director, Region 05
National Labor Relations Board**

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D&H Demolition, LLC

Cases 05-CA-186463 and 05-RC-183865

and

**Construction and Master Laborers' Local
Union 11, affiliated with Laborers'
International Union of North America**

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by the undersigned parties to this proceeding that:

1. Pursuant to a Stipulated Election Agreement approved by the Regional Director, Region 5, on September 19, 2016, an election was conducted in this matter via United States mail, with a count scheduled for November 3, 2016. The appropriate collective bargaining unit consisted of:

Included: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area.

Excluded: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

2. On October 18, 2016, the Petitioner Union filed a charge in Case 05-CA-186463 and a Request to Block the Petition in Case 05-RC-183865.

3. On November 3, 2016, the ballots Region 5 received by United States mail were impounded by the Region based upon a determination by the Regional Director that the ballots should be impounded pending the investigation of Case 05-CA-186463.

4. **IT IS HEREBY STIPULATED AND AGREED** by and between the undersigned parties that the election conducted in Case 05-RC-183865 described above in paragraph 3, should be set aside and a second election conducted without regard to the merits of the blocking charge.

5. With respect to the election described above in paragraph 3, in Case 05-RC-183865 and impounded ballots, the Employer and the Union hereby waive the right to: (a) opening the mail ballots received by the Region 5 office; (b) submit any objections or further evidence pertaining to the election; (c) a Report to the Board on any objections; (d) a Report and Recommendation on any said objections; (e) except to any such Report and Recommendation on said objections; (f) a Decision and Order by the Board on said objections; (g) all other proceedings concerning said election to which they may be entitled under the Act or the Rules and Regulations of the Board.

6. Concurrent with this stipulation, the parties are entering into an informal settlement in Case 05-CA-186463 (the "Informal Settlement").

7. The parties hereby agree that once D&H Demolition, LLC has taken all action required by the Informal Settlement and the full period for the notice posting has passed, the Regional Director may proceed to conduct a second election in Case 05-RC-183865 at a date, time, and place to be decided by the Regional Director.

8. Eligible to vote in the election will be the employees employed in the appropriate collective bargaining unit described above. The election date, times, place and payroll period for eligibility will be determined by the Regional Director in consultation with the parties and in consideration of the expiration of the Notice posting period described in the Informal Settlement.

9. **IT IS FURTHER AGREED** by the Employer that, as required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and the parties named in this stipulation an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters, accompanied by a certificate of service on all parties. To be filed and served, the list must be received by the Regional Director and the parties within two business days upon request of the Regional Director. The letter requesting election eligibility list will designate the appropriate payroll eligibility period as discussed in the immediately preceding paragraph. **The Region will no longer serve the voter list.**

10. **IT IS FURTHER STIPULATED AND AGREED** that the Notice of Election for the rerun election will contain the following language:

The election conducted with a ballot count scheduled for November 3, 2016, was set aside by mutual agreement of the parties, in lieu of litigating allegations of objectionable conduct by the Employer that interfered with the employees' exercise of free and reasoned choice and which the Employer denies. A rerun election will be held in accordance with the terms of this Notice of Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

BED

11. **IT IS FURTHER STIPULATED AND AGREED** that all procedures involving the conduct of the rerun election and subsequent to the conclusion of the counting of ballots in the rerun election shall be in conformity with the Rules and Regulations of the Board.

**CONSTRUCTION AND MASTER
LABORERS' LOCAL UNION 11,
AFFILIATED WITH LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA**

D & H DEMOLITION, LLC

(Employer)

By /s/ Edward R. Noonan 4/12/17

(Name) (Date)

(Petitioner)

By  4/27/17

(Name) (Date)

Recommended: Barbara E. Duvall April 24, 2017

Barbara E. Duvall, Field Attorney (Date)

Date approved: 4/25/17

/s/ Charles L. Posner

**Regional Director, Region 05
National Labor Relations Board**



United States of America
National Labor Relations Board



NOTICE OF ELECTION

**INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL
RERUN OF THE ELECTION HELD ON SEPTEMBER 19, 2016**

NOTICE TO ALL VOTERS

The election conducted with a ballot count scheduled for November 3, 2016, was set aside by mutual agreement of the parties, in lieu of litigating allegations of objectionable conduct by the Employer that interfered with the employees' exercise of free and reasoned choice and which the Employer denies. A rerun election will be held in accordance with the terms of this Notice of Election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Friday, January 19, 2018, ballots will be mailed to voters from the National Labor Relations Board, Region 05 Resident Office, 1015 Half Street SE, Washington, DC 20570-0001. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, January 26, 2018, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Resident Office at (202)208-3000 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 05 Resident Office on Friday, February 9, 2018 at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 05 Resident Office prior to the counting of the ballots.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



United States of America National Labor Relations Board NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

05-RC-183865

N.L.R.B./202-208-3000

05-RC-183865

VOTING UNIT – For Certain Employees of – D & H DEMOLITION, LLC

EMPLOYEES ELIGIBLE TO VOTE: All full-time and regular part-time laborers, including demolition and asbestos removal employees employed directly by the Employer at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area who were employed by the Employer during the payroll period ending December 30, 2017.

EMPLOYEES NOT ELIGIBLE TO VOTE: Employees at any jobsite who are jointly employed by the Employer and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

DATE, HOURS AND PLACE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Friday, January 19, 2018, ballots will be mailed to voters from the National Labor Relations Board, Region 05 Resident Office, 1015 Half Street SE, Washington, DC 20570-0001. Voters must sign the outside of the envelope in which the ballot is returned. **Any ballot received in an envelope that is not signed will be automatically void.**

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, January 26, 2018, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Resident Office at (202)208-3000 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 05 Resident Office on Friday, February 9, 2018 at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 05 Resident Office prior to the counting of the ballots.

	UNITED STATES OF AMERICA ESTADOS UNIDOS DE AMERICA National Labor Relations Board Junta Nacional De Relaciones Del Trabajo 05-RC-183865	
OFFICIAL SECRET BALLOT PAPELETA SECRETA OFICIAL For certain employees of Para Ciertos Empleados De D & H DEMOLITION, LLC		
Do you wish to be represented for purposes of collective bargaining by ¿Desea usted estar representado para los fines de negociar colectivamente por CONSTRUCTION AND MASTER LABORERS' LOCAL UNION 11, AFFILIATED WITH LABORERS' INTERNATIONAL UNION OF NORTH AMERICA?		
MARK AN "X" IN THE SQUARE OF YOUR CHOICE MARQUE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCIÓN		
YES SI <input type="checkbox"/>	NO NO <input type="checkbox"/>	
DO NOT SIGN THIS BALLOT. See enclosed instructions. NO FIRME ESTA PAPELETA. Vea las Instrucciones incluidas. The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board. La Junta Nacional de Relaciones del Trabajo no respalda a ninguna de las opciones en esta elección. Cualquier marca que se pueda ver en cualquier muestra de la papeleta no fue hecha por la Junta Nacional de Relaciones del Trabajo.		

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (202)208-3000 or visit the NLRB website www.nlr.gov for assistance.

One Freedom Square
11951 Freedom Drive
3rd Floor, Suite 310
Reston, VA 20190
Phone: (703) 860-4194
Fax: (703) 860-1865



LiUNA Mid-Atlantic Regional Organizing Coalition

BRIAN J. PETRUSKA
GENERAL COUNSEL

703-476-2538
bpetruska@maliuna.org

December 10, 2018

BY EMAIL AND REGULAR MAIL

Edward Noonan, Esq.
Eckert, Seamans, Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W. 12th Floor
Washington, DC 20006
enoonan@eckertseamans.com

Re: D&H Demolition, LLC, 05-RC-183865

Dear Mr. Noonan:

On behalf of Construction and Master Laborers' Local Union No. 11, I write to schedule the first bargaining session between the Union and your client, D&H Demolition, LLC. The Union's negotiating committee is available to meet any day the week of January 28, 2019. Please advise us as to what dates and times in that period are convenient for you and your clients.

In addition, on behalf of Local 11, I am requesting the following documents from your client, D&H Demolition, insofar as responsive materials relate to the bargaining unit of employees for whom Local 11 is the certified exclusive representative pursuant to the NLRB proceeding captioned under Case No. 05-RC-183865:

1. Any written job descriptions for the positions within the bargaining unit.
2. Any written training materials related to the positions within the bargaining unit.
3. A copy of all employee policies, handbooks, manuals, safety guidelines, or written work rules currently applicable to bargaining unit employees.
4. Any documents that set out the regular work hours for employees within the bargaining unit.
5. A roster of all full-time and regular part-time bargaining unit employees, including all employees listed on the Voter Eligibility List that the Employer submitted in Case No. 05-RC-183865, that includes their date of hire and current or most recent rate of pay.

9. A copy of the summary plan description and summary of benefits for any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate.

10. A statement of the monthly premium that a bargaining unit employee is responsible for paying for either self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate.

11. A statement of the monthly premium that the employer is responsible for paying for an employee with self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate.

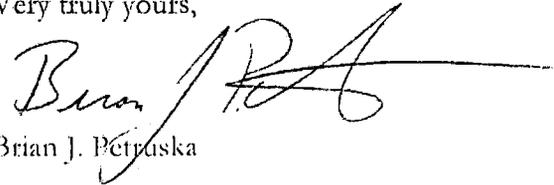
12. A copy of the summary plan description for any 401(k) or other form of retirement benefit plan(s) for which bargaining unit employees are eligible to participate.

13. A description of any other benefits that the Employer provides to employees, including but not limited to paid vacation, sick days, or holidays, uniforms, gloves, personal protective equipment, access to cleaning products, and job training.

14. A copy of any other contract, policy, or plan that the Employer anticipates will constrain its bargaining options or will constrain the range of proposals from the Union to which it can agree.

The Union requests that the above documents be produced no later than December 31, 2018. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian J. Petruska", with a long horizontal line extending to the right.

Brian J. Petruska



Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

TEL 202 659 6600
FAX 202 659 6699
www.eckertseamans.com

Edward R. Noonan
Direct Dial: (202) 659-6616
Email: enoonan@eckertseamans.com

December 11, 2018

Brian J. Petruska, Esq.
LIUNA Mid-Atlantic Organizing Coalition
One Freedom Square
11951 Freedom Drive, Suite 310
Reston, VA 20190

Re: D & H Demolition, LLC

Dear Mr. Petruska,

I am in receipt of your December 10, 2018 letter seeking to schedule a bargaining session with D & H Demolition, LLC and requesting certain information. It is D & H's position that the Regional Director for Region 5 erroneously certified your organization as the representative of bargaining unit employees. D & H has requested review of such certification. Accordingly, D & H declines to schedule any bargaining session or recognize your client as the exclusive bargaining representative of any of its employees.

Very truly yours,

A handwritten signature in black ink that reads "Edward R. Noonan". The signature is written in a cursive, flowing style.

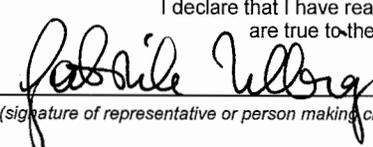
Edward R. Noonan

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 5-CA-233552	Date Filed 12/21/18

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer D&H Demolition, LLC	b. Tel. No. 410-761-0018
	c. Cell No. 445-938-4725
d. Address (Street, city, state, and ZIP code) 889 Airport Park Rd, Suite C Glen Burnie, MD 21061	f. Fax No.
	e. Employer Representative Manuel Espinal
i. Type of Establishment (factory, mine, wholesaler, etc.) Demolition Contractor	g. e-mail manueldhdemo@gmail.com
	h. Number of workers employed 30
j. Identify principal product or service Construction and Demolition services	
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) D&H Demolition, LLC, through its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Sec. 7 of the Act by: Failing to recognize and bargain with the Union starting December 11, 2018, when the Union received a letter from the company's attorney stating the refusal. On September 18, 2018, the Board certified the Union as the exclusive collective bargaining representative of the employees following an election, and the Union requested bargaining from D&H Demolition, LLC, on December 10, 2018.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Construction and Master Laborers' Local 11	
4a. Address (Street and number, city, state, and ZIP code) 5201 1st. Place, NE Washington, D.C., 20011	4b. Tel. No. 202-723-3366
	4c. Cell No.
	4d. Fax No.
	4e. e-mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Laborers' International Union of North America	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
 _____ (signature of representative or person making charge)	Gabriele Ulbig, Associate Counsel

Address 11951 Freedom Drive, Suite 310, Reston, VA 20190	
Date 12/21/2018	
Tel. No. 703-8604194	
Office, if any, Cell No.	
Fax No. 703-860-1865	
e-mail gulbig@maliuna.org	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlr.gov
Telephone: (410)962-2822
Fax: (410)962-2198



Download
NLRB
Mobile App

January 4, 2019

Mr. Manuel Espinal
D&H Demolition, LLC
889 Airport Park Road, Suite C
Glen Burnie, MD 21061-2555

Re: D&H Demolition, LLC
Case 05-CA-233552

Dear Mr. Espinal:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner Dennis Randall whose telephone number is (410)962-2919. If this Board agent is not available, you may contact Supervisory Field Examiner David A. Colangelo whose telephone number is (410)962-0180.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. **Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as one in which injunctive relief pursuant to Section 10(j) of the Act may be appropriate.** Therefore, in addition to investigating the merits of the unfair labor practice allegations, the Board agent will also inquire into those factors relevant to making a

determination as to whether or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions

about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Nancy Wilson". The signature is written in a cursive, flowing style.

Nancy Wilson
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

05-CA-233552

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**

[] CORPORATION [] LLC [] LLP [] PARTNERSHIP [] SOLE PROPRIETORSHIP [] OTHER (Specify)

3. IF A CORPORATION or LLCA. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): [] CALENDAR YR [] 12 MONTHS or [] FISCAL YR (FY dates)

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (**Check the largest amount**):
[] \$100,000 [] \$250,000 [] \$500,000 [] \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: _____**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**

[] YES [] NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

<p>D&H DEMOLITION, LLC</p> <p>Charged Party</p> <p>and</p> <p>CONSTRUCTION AND MASTER LABORERS' LOCAL 11</p> <p>Charging Party</p>
--

Case 05-CA-233552

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 4, 2019, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Mr. Manuel Espinal
D&H Demolition, LLC
889 Airport Park Rd Ste C
Glen Burnie, MD 21061-2555

January 4, 2019

Date

Doni Graham, Designated Agent of NLRB

Name

/s/ Doni Graham

Signature

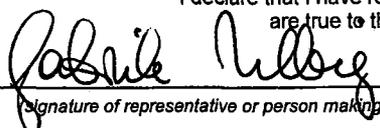
FORM NLRB-501
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case OS-CA-233564	Date Filed 12/21/18

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer D&H Demolition, LLC	b. Tel. No. 410-761-0018
	c. Cell No. 445-938-4725
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 889 Airport Park Rd, Suite C Glen Burnie, MD 21061	e. Employer Representative Manuel Espinal
	g. e-mail manueldhdemo@gmail.com
	h. Number of workers employed 30
i. Type of Establishment (factory, mine, wholesaler, etc.) Demolition Contractor	j. Identify principal product or service Construction and Demolition services
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) D&H Demolition, LLC, through its officers, agents, and supervisors, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Sec. 7 of the Act by: Failing to provide information to the Union starting December 11, 2018, when the Union received a letter from the company's attorney stating the refusal to recognize the Union. On September 18, 2018, the Board certified the Union as the exclusive collective bargaining representative of the employees following an election, and the Union requested information relevant to the bargaining unit and bargaining from D&H Demolition, LLC, on December 10, 2018.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Construction and Master Laborers' Local 11	
4a. Address (Street and number, city, state, and ZIP code) 5201 1st. Place, NE Washington, D.C., 20011	4b. Tel. No. 202-723-3366
	4c. Cell No.
	4d. Fax No.
	4e. e-mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Laborers' International Union of North America	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
	Gabriele Ulbig, Associate Counsel
(Signature of representative or person making charge)	(Print/type name and title or office, if any)
Address <u>11951 Freedom Drive, Suite 310, Reston, VA 20190</u>	Date <u>12/21/2018</u>
	Tel. No. 703-8604194
	Office, if any, Cell No.
	Fax No. 703-860-1865
	e-mail gulbig@maliuna.org

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, SUITE 600
BALTIMORE, MD 21201

Agency Website: www.nlr.gov
Telephone: (410) 962-2822
Fax: (410) 962-2198



Download
NLRB
Mobile App

January 7, 2019

Mr. Manuel Espinal
D&H Demolition, LLC
889 Airport Park Road, Suite C
Glen Burnie, MD 21061-2555

Re: D&H Demolition, LLC
Case 05-CA-233564

Dear Mr. Espinal:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner Dennis Randall whose telephone number is (410) 962-2919. If this Board agent is not available, you may contact Supervisory Field Examiner David A. Colangelo whose telephone number is (410) 962-0180.

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office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Nancy Wilson". The signature is written in a cursive, flowing style.

Nancy Wilson
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

05-CA-233564

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**

[] CORPORATION [] LLC [] LLP [] PARTNERSHIP [] SOLE PROPRIETORSHIP [] OTHER (Specify)

3. IF A CORPORATION or LLCA. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): [] CALENDAR YR [] 12 MONTHS or [] FISCAL YR (FY dates)

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (**Check the largest amount**):

[] \$100,000 [] \$250,000 [] \$500,000 [] \$1,000,000 or more If less than \$100,000, indicate amount.

I. **Did you begin operations within the last 12 months?** If yes, specify date: _____**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**

[] YES [] NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

D&H DEMOLITION, LLC

Charged Party

and

**CONSTRUCTION AND MASTER LABORERS'
LOCAL 11**

Charging Party

Case 05-CA-233564

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 7, 2019, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Mr. Manuel Espinal
D&H Demolition, LLC
889 Airport Park Road, Suite C
Glen Burnie, MD 21061-2555

January 7, 2019

Date

Jacqueline Denegal, Designated Agent of
NLRB

Name

/s/ Jacqueline Denegal

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

D & H DEMOLITION, LLC

Employer

and

Case 05-RC-183865

CONSTRUCTION AND MASTER
LABORERS' LOCAL UNION 11,
AFFILIATED WITH LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA

Petitioner

ORDER

The Employer's request for review of the Regional Director's Decision and Direction on Challenges is denied as it raises no substantial issues warranting review.

JOHN F. RING, CHAIRMAN

LAUREN McFERRAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., January 9, 2019.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D&H DEMOLITION, LLC

and

Case 5-CA-233552
5-CA-233564

CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11 A/W LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 5-CA-233552 and Case 5-CA-233564, which are based on charges filed by Construction and Master Laborers' Local Union 11 a/w Laborers' International Union of North America (the Charging Party) against D&H Demolition, LLC (Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 5-CA-233552 was filed by the Charging Party on December 21, 2018, and a copy was served on Respondent by U.S. mail on January 4, 2019.

(b) The charge in Case 5-CA-233564 was filed by the Charging Party on December 21, 2018, and a copy was served on Respondent by U.S. mail on January 7, 2019.

2. (a) At all material times, Respondent has been a limited liability company with an office and principal place of business in Glen Burnie, Maryland (Respondent's facility), and has been engaged in the business of performing demolition and asbestos removal.

(b) During the 12-month period ending January 31, 2019, Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Maryland.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

4. At all material times, an Unnamed Agent held the position of Respondent's Counsel and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

5. The following employees of Respondent (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 laborers, including demolition and asbestos removal employees employed directly by Respondent at its jobsites at which the Employer performs work in the District of Columbia and in Maryland within the District of Columbia metropolitan area; excluding employees at any jobsite who are jointly employed by Respondent and any other employer, foreman, superintendents, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

6. (a) Between February 14, 2018 and March 7, 2018, a representation election was conducted by U.S. mail among the employees in the Unit; and, on September 18, 2018, the Acting Regional Director for Region Five certified the Charging Party as the exclusive collective-bargaining representative of the Unit.

(b) On September 24, 2018, Respondent filed a Request for Review of the Acting Regional Director's Decision and Direction on Challenges that predated the certification of the Charging Party as the exclusive collective-bargaining representative of the Unit, described above in paragraph 6(a).

(c) On January 9, 2019, the Board denied Respondent's Request for Review of the Acting Regional Director's Decision and Direction on Challenges.

(d) At all times since September 18, 2018, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

7. About December 10, 2018, the Charging Party, by letter, requested that Respondent bargain collectively with the Charging Party as the exclusive collective-bargaining representative of the Unit.

8. About December 11, 2018, Respondent, by letter from an Unnamed Agent, declined to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the Unit.

9. Since about December 11, 2018, Respondent has failed and refused to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the Unit.

10. Since about December 10, 2018, the Charging Party, by letter, has requested that Respondent furnish the Charging Party with the following information:

- (a) any written job descriptions for the positions within the bargaining unit;
- (b) any written training materials related to the positions within the bargaining unit;

(c) a copy of all employee policies, handbooks, manuals, safety guidelines, or written work rules currently applicable to bargaining unit employees;

(d) any documents that set out the regular work hours for employees within the bargaining unit;

(e) a roster of all full-time and regular part-time bargaining unit employees, including all employees listed on the Voter Eligibility List that [Respondent] submitted in Case 5-RC-183865, that includes their date of hire and current or most recent rate of pay;

(f) a copy of the summary plan description and summary of benefits for any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate;

(g) a statement of the monthly premium that a bargaining unit employee is responsible for paying either self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate;

(h) a statement of the monthly premium that the employer is responsible for paying for an employee with self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate;

(i) a copy of the summary plan description for any 401(k) or other form of retirement benefit plan(s) for which bargaining unit employees are eligible to participate; and

(j) a description of any other benefits that Respondent provides to employees, including but not limited to paid vacation, sick days, or holidays, uniforms, gloves, personal protective equipment, access to cleaning products, and job training.

11. The information requested by the Charging Party, as described above in paragraph 10, is necessary for, and relevant to, the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the Unit.

12. Since about December 11, 2018, Respondent has failed and refused to furnish the Charging Party with the information requested by it as described above in paragraph 10.

13. By the conduct described above in paragraphs 8, 9 and 12, Respondent has 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.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

As part of the remedy for the unfair labor practices alleged above in paragraphs 8, 9 and 13, the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before March 8, 2019, or postmarked on or before March 7, 2019.**

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and 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 an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. 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 a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to 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 still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. 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 complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on June 6, 2019, 10:00 a.m., at the Board Hearing Room , Suite 6001, 1015 Half Street, SE, Washington, DC, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. 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.

Dated at Baltimore, Maryland this 22nd day of February 2019.

(SEAL)

/s/ NANCY WILSON

Nancy Wilson, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D&H DEMOLITION, LLC

and

Cases 5-CA-233552 & 5-CA-233564

CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11 A/W LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA

AFFIDAVIT OF SERVICE OF: Order Consolidating Cases, Consolidated
Complaint and Notice of Hearing
(with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **February 22, 2019**, 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 NO.
7010 0780 0002 4149 6537

EDWARD R. NOONAN, ESQ.
ECKERT, SEAMANS, CHERIN & MELLOTT, LLC
12TH FLOOR
1717 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20006-3942

MR. MANUEL ESPINAL
D&H DEMOLITION, LLC
SUITE C
889 AIRPORT PARK ROAD
GLEN BURNIE, MD 21061-2555

GABRIELE ULBIG, ESQ.
LABORERS' INT'L. UNION OF NORTH AMERICA
1 FREEDOM SQUARE
11951 FREEDOM DRIVE, SUITE 310
RESTON, VA 20190

CONSTRUCTION AND MASTER LABORERS'
LOCAL 11
5201 1ST PLACE, N.E.
WASHINGTON, DC 20011

February 22, 2019

Monica Graves
Designated Agent of NLRB

Date

Name

Monica Graves

Signature

Exhibit 23

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D & H DEMOLITION, LLC)	
)	
)	
and)	Case 5-CA-233552
)	5-CA-233564
CONSTRUCTION AND MASTER)	
LABORERS' LOCAL UNION 11 A/W)	
LABORERS' INTERNATIONAL UNION)	
OF NORTH AMERICA)	

ANSWER TO COMPLAINT

D & H Demolition, LLC (the “Company”), by its attorneys Eckert Seamans Cherin & Mellott LLC, and pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board, hereby answers the Complaint in this matter as follows:

1. The allegations of Paragraph 1 of the Complaint are admitted.
2. The allegation of Paragraph 2 (a) of the Complaint is admitted and the allegation of Paragraph 2(b) is denied..
3. The allegation of Paragraph 3 of the Complaint is admitted.
4. The allegations of Paragraph 4 of the Complaint are denied.
5. The allegation of Paragraph 5 of the Complaint is admitted.
6. The allegations of Paragraphs 6 (a) is admitted, except that it is denied that the Regional Director’s certification of the charging party as the exclusive representative of any Company employee was lawful or proper. The allegations of Paragraphs (b) and (c) of the Complaint are admitted. The allegation of Paragraphs 6(d) of the Complaint is denied.
7. The allegation of Paragraph 7 of the Complaint is admitted.

8. The allegation of Paragraph 8 is admitted to the extent that it alleges that the Company notified the charging party, in writing, that it refused to bargain with it.
9. The allegation of Paragraph 9 is admitted except that it is denied that the Company is under any obligation to recognize or bargain with the charging party as the exclusive representative of any of its employees.
10. The allegations of Paragraph 10 of the Complaint are admitted.
11. The allegations of Paragraph 11 of the Complaint are denied.
12. The allegation of Paragraph 12 of the Complaint is admitted, except that it is denied that the Company has any obligation to bargain with or provide information to the charging party.
13. The allegation of Paragraph 13 of the Complaint is denied.
14. The allegation of Paragraph 14 of the Complaint is denied.

Wherefore, the Company demands that the Complaint be dismissed.

Respectfully submitted



Edward R. Noonan
Eckert Seamans, LLC
Suite 1200
1717 Pennsylvania Ave. NW
Washington, D.C. 20006
Tel. 202 659 6616
Fax. 202 659 6699

Counsel for D & H Demolition, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that, on this 8th day of March, a true and correct copy of the foregoing Answer to Complaint was served electronically and by regular, United States Mail, postage pre-paid, upon Counsel for the Charging Party at the below address.

Brian J. Petruska, Esq.
LIUNA Mid-Atlantic Organizing Coalition
One Freedom Square
11951 Freedom Drive, Suite 310
Reston, VA 20190
bpetruska@maliuna.org



Edward R. Noonan

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D&H DEMOLITION, LLC

and

Cases 5-CA-233552
5-CA-233564

CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11 A/W LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA

AMENDMENT TO THE CONSOLIDATED COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, the Consolidated Complaint and Notice of Hearing issued on February 22, 2019, is amended by replacing paragraph 2 as follows:

2. (a) At all material times, Respondent has been a limited liability company with an office and principal place of business in Glen Burnie, Maryland (Respondent's facility), and has been engaged in the business of performing demolition and asbestos removal.

(b) During the 12-month period ending January 31, 2019, Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at Respondent's facility goods valued in excess of \$50,000 from other enterprises located within the State of Maryland, each of which other enterprises had received these goods directly from points outside the State of Maryland.

(c) During the 12-month period ending January 31, 2019, Respondent has conducted its business operations described above in paragraph 2(a) in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

All other aspects in the original Consolidated Complaint and Notice of Hearing remain unchanged. The answer to the amended portion of the consolidated complaint is due by the close of business April 18, 2019, and Respondent is only required to respond to the allegations added by this Amendment to the Consolidated Complaint.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the above amendment to the Consolidated Complaint. The answer must be **received by this office on or before April 18, 2019, or postmarked on or before April 17, 2019, 2019.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and 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 an answer be signed by counsel or non-attorney representative for represented parties or by the

party if not represented. See Section 102.21. 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 a complaint or amendment thereto is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to 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 still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. 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 amendment to the Consolidated Complaint are true.

Dated at Baltimore, Maryland this 4th day of April 2019.

(SEAL)

/s/ NANCY WILSON

Nancy Wilson, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D&H DEMOLITION, LLC

and

Cases 5-CA-233552
5-CA-233564

CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11 A/W LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA

AFFIDAVIT OF SERVICE OF: Amendment to the Consolidated Complaint
(with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **April 4, 2019**, 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 NO.
7010 0780 0002 4149 6612

EDWARD R. NOONAN, ESQ.
ECKERT, SEAMANS, CHERIN & MELLOTT, LLC
12TH FLOOR
1717 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20006-3942

MR. MANUEL ESPINAL
D&H DEMOLITION, LLC
SUITE C
889 AIRPORT PARK ROAD
GLEN BURNIE, MD 21061-2555

GABRIELE ULBIG, ESQ.
LABORERS' INT'L. UNION OF NORTH AMERICA
1 FREEDOM SQUARE
11951 FREEDOM DRIVE, SUITE 310
RESTON, VA 20190

CONSTRUCTION AND MASTER LABORERS'
LOCAL 11
5201 1ST PLACE, N.E.
WASHINGTON, DC 20011

April 4, 2019

Monica Graves
Designated Agent of NLRB

Date

Name

Monica Graves

Signature

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

D & H DEMOLITION, LLC)	
)	
)	
and)	Case 5-CA-233552
)	5-CA-233564
CONSTRUCTION AND MASTER)	
LABORERS' LOCAL UNION 11 A/W)	
LABORERS' INTERNATIONAL UNION)	
OF NORTH AMERICA)	

ANSWER TO AMENDMENT TO COMPLAINT

D & H Demolition, LLC (the "Company"), by its attorneys Eckert Seamans Cherin & Mellott LLC, and pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board, hereby answer the Amendment to the Consolidated Complaint in this matter as follows:

1. The allegations of Paragraphs 2 (a) (b) and (c) are admitted.

Respectfully submitted



Edward R. Noonan
Eckert Seamans, LLC
Suite 1200
1717 Pennsylvania Ave. NW
Washington, D.C. 20006
Tel. 202 659 6616
Fax. 202 659 6699

Counsel for D & H Demolition, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that, on this 17th day of April, a true and correct copy of the foregoing Amended Answer to Complaint was served electronically and by regular, United States Mail, postage pre-paid, upon Counsel for the Charging Party at the below address.

Brian J. Petruska, Esq.
LIUNA Mid-Atlantic Organizing Coalition
One Freedom Square
11951 Freedom Drive, Suite 310
Reston, VA 20190
bpetruska@maliuna.org



Edward R. Noonan