

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

National Labor Relations Board ,

Petitioner

Docket No. 19-3009

v.

Laborers' International Union of North America,
Local Union No. 91 (Scrufari Construction),

Respondent.

ANSWER TO APPLICATION FOR ENFORCEMENT

The Respondent, Laborers' International Union of North America, Local Union No. 91 (Scrufari Construction) (hereinafter "Local 91"), by and through its attorneys, Lipsitz Green Scime Cambia LLP, Robert L. Boreanaz, Esq. of counsel, as for its answer to the allegations set forth in the Application for Enforcement filed by Petitioner's, National Labor Relations Board (hereinafter "the Board") on October 3, 2019, hereby states as follows:

1. Respondent admits that the Board issued its Decision and Order in Board Case Nos. 03-CB-196682 and 03-CB- 201412 on August 12, 2019, reported at 368 NLRB No 40 (2019) (hereinafter "Board Order").

2. Respondent admits that on September 20, 2019, Respondent filed a petition with this Court to review the same Board Order.

3. Respondent admits that on October 3, 2019, Petitioner filed an application with this Court to enforce the same Board Order.

4. Respondent admits that Court's jurisdiction and venue is proper in the Second Circuit.

5. Respondent maintains the Board's Order should not be enforced because it is not supported by substantial evidence in the record as a whole and is contrary to applicable law.

6. Respondent admits it operates a non-exclusive hiring hall operated in Niagara Falls, New York.

7. Respondent maintains the record demonstrates it did not commit any unfair labor practices in regard to its operation of its non-exclusive hiring hall.

8. Respondent maintains the record demonstrates its asserted non-discriminatory grounds for not referring Ronald Mantell ("RM") were not pretextual or unsubstantiated.

9. Respondent maintains the record demonstrates it proffered legitimate reasons for altering when members could review the out-of-work list.

10. Respondent denies any and all other allegations and findings set forth in the Board's Order, in which Petitioner seeks to enforce.

11. Respondent denies that it violated the National Labor Relations Act (hereinafter "the Act"), as alleged in the Board's Order in which Petitioner seeks to enforce.

12. Respondent denies it failed to file exceptions to the Board's Order or that the Board is entitled to summary enforcement of its findings.

13. Respondent denies that the Board's factual findings are supported by substantial evidence on the record and, further, denies that the legal conclusions in the Board's Order has a reasonable basis in law.

14. Respondent denies that its challenges to the Board's Order are jurisdictionally barred under Section 10(e) of the National Labor Relations Act as calling for a legal conclusion.

15. The Board's legal conclusion that Respondent's actions were in violation of Section 8(b)(1)(A) of the Act is erroneous.

16. Respondent denies that the Board is otherwise entitled to enforcement of its Order.

WHEREFORE, based on the foregoing deficiencies in the Board Order, Local 91 respectfully requests that this Court deny the Board's application for enforcement, and grant such other and further relief as this Court may find just and proper.

Dated: October 10, 2019
Buffalo, New York

BY: /s/ Robert L. Boreanaz
Robert L. Boreanaz, Esq.
LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for Respondent
42 Delaware Ave., Suite 120
Buffalo, New York 14202
(716) 849-1333 ext. 483
rboreanaz@lglaw.com