

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20, SUBREGION 37**

**LOCAL 675 OF THE UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING & PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA**

and

Case 20-CB-251372

RPS MECHANICAL, INC.

**GENERAL COUNSEL'S STATEMENT OF OPPOSITION TO RESPONDENT'S
REQUEST FOR PERMISSION TO FILE A SPECIAL APPEAL AND RESPONDENT'S
SPECIAL APPEAL OF THE ADMINISTRATIVE LAW JUDGE'S ORDER DIRECTING
REMOTE HEARING VIA ZOOM**

On July 30, 2020,¹ Administrative Law Judge (ALJ) Eleanor Laws issued an Order Directing Remote Hearing Via Zoom (Order) in the above-captioned matter.² On August 3, Local 675 Of The United Association Of Journeymen And Apprentices Of The Plumbing & Pipe Fitting Industry Of The United States And Canada (Respondent) filed a request for permission to file a special appeal and special appeal of the Order.³ Pursuant to Section 102.26 of the NLRB's Rules and Regulations, Counsel for the General Counsel (General Counsel) hereby opposes Respondent's request and special appeal.

¹ All dates are in 2020 unless otherwise indicated.

² A copy of the Order is already attached as Exhibit 1 to Respondent's request and special appeal.

³ On August 4, ALJ Laws issued an Order Postponing Hearing in this matter pending the Board's ruling on Respondent's request and its special appeal. A copy of that document is already attached to Respondent's request and special appeal as supplemental Exhibit 21, e-filed on August 5.

I. Introduction and Background

The Complaint and the Amendment to the Complaint in this case were issued on March 6 and July 1, respectively. Copies of these documents are attached as **Exhibits 1 and 2**. The issue presented in this matter is whether Respondent violated Section 8(b)(3) of the Act by repudiating the Ohana Stabilization Agreement (OSA), an agreement created pursuant to Section 8(f) of the Act, as it pursued an inappropriate grievance filed under a separate contract. The case was scheduled for hearing beginning on May 19. However, on April 2, the Regional Director of Region 20 rescheduled the hearing date to August 11, to allow time for the COVID-19 crisis to abate. A copy of the Order Rescheduling Hearing is attached as **Exhibit 3**. Thereafter, on July 30, ALJ Laws issued the Order from which Respondent seeks to take this special appeal. Respondent's request and special appeal should be rejected.

II. A Hearing By Zoom Is Feasible

A hearing conducted by Zoom videoconference technology is feasible in this case. The Complaint involves a single, straightforward allegation that the Respondent violated Section 8(b)(3) by certain specific acts. At this time, General Counsel believes that most of the known evidence does not involve credibility determinations because they are primarily set forth in documents. General Counsel also anticipates that the parties should be able to enter into stipulations regarding many of the relevant documents because they consist of correspondence between the Respondent and Charging Party.

Provided stipulations can be reached on most exhibits, as of now General Counsel believes he may have approximately two witnesses on direct examination. This limited number of anticipated witnesses to cover a single, uncomplicated allegation also makes a Zoom videoconference hearing feasible. In the event stipulations cannot be reached on most exhibits,

General Counsel may need to call several other witnesses for authentication purposes. However, these additional witnesses' testimony would generally be uncomplicated, as their testimony would be for limited purposes.

In order to bolster its claim that an in-person hearing is required, Respondent appears to obfuscate the straightforward nature of the Complaint allegation. Respondent attempts to create the impression that this hearing will involve complicated litigation that would make it unworkable unless done in person. (Special Appeal at 14-16). But, as the Complaint makes clear, this is not a case involving multiple allegations of wrongdoing that is dependent on dozens of witnesses. Respondent's assertion that it must potentially call over a dozen witnesses in its defense to a single 8(b)(3) allegation should be viewed with healthy skepticism, as General Counsel surmises most are likely to be cumulative or irrelevant. Nevertheless, although litigation may ultimately become complicated, it does not automatically necessitate an in-person hearing. Rather, these routine matters involving multiple witnesses (like other litigation matters, such as documentary evidence, subpoenas, and petitions to revoke) can be addressed on a case-by-case basis with the ALJ during the normal course of the hearing and resolved via rulings and orders. These concerns should not be an obstacle to a Zoom videoconference hearing, *per se*.

III. Conclusion

For the reasons set forth above, it is respectfully requested that the Board reject Respondent's Request For Special Permission To Appeal The Order Of Administrative Law Judge And Its Special Appeal, and that the Board instead affirm the Administrative Law Judge's

General Counsel's Statement of Opposition

Case 20-CB-251372

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Order Directing Remote Hearing Via Zoom.

Dated at Honolulu, Hawaii this 10th day of August 2020.

Respectfully Submitted,

/s/ Trent K. Kakuda
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Counsel for the General Counsel
National Labor Relations Board
Subregion 37
300 Ala Moana Blvd. Rm. 7-245
P.O. Box 50208
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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20, SUBREGION 37**

**UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICE PLUMBERS &
PIPEFITTERS OF THE U.S. & CANADA,
LOCAL UNION 675**

and

Case 20-CB-251372

RPS MECHANICAL, INC.

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by RPS Mechanical, Inc. (Charging Party or Employer). It 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 that Plumbers & Fitters UA Local 675, whose correct name is United Association of Journeymen and Apprentice Plumbers & Pipefitters of the U.S. & Canada, Local Union 675 (Respondent or Union), has violated the Act as described below.

1. The charge in Case 20-CB-251372 was filed by the Employer on November 7, 2019, and a copy was served on Respondent by U.S. mail that same day.
2. (a) At all material times, the Employer has been a corporation with an office and place of business in Kapolei, Hawaii, and has been a contractor in the construction industry installing water source heat pump central air systems at U.S. military housing projects.

(b) During the calendar year ending December 31, 2019, the Employer, in conducting its business operations described above in subparagraph 2(a), has purchased and received at its facility in the State of Hawaii goods valued in excess of \$50,000 directly from points outside the State of Hawaii.

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

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

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent within the meaning of Section 2(13) of the Act:

- (i) Valentino Ceria - Business Manager/Financial Secretary-Treasurer
- (ii) Lance Hayashi - Business Agent

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

All building trades mechanics and laborers within their respective jurisdictions that are employed on the U.S. Army Hawaii Residential Communities Initiative Project and covered by the Ohana Stabilization Agreement.

(b) About October 23, 2018, the Employer, an employer engaged in the building and construction industry, entered into a letter of assent whereby it agreed to be bound by the collective-bargaining agreement between Respondent and Actus Lend Lease LLC, called the Ohana Stabilization Agreement.

(c) By entering into the agreement described above in subparagraph 6(b), the Employer recognized Respondent as the exclusive collective-bargaining representative of the employees in the Unit within Respondent's jurisdiction without regard to whether Respondent's majority status had ever been established under Section 9(a) of the Act.

(d) At all material times, but from at least October 23, 2018, based on Section 8(f) of the Act, Respondent has been the exclusive collective-bargaining representative of the employees in the Unit within Respondent's jurisdiction.

7. (a) During all material times, and at least since about October 23, 2018, the Employer and Respondent have been parties to a collective-bargaining agreement called the Ohana Stabilization Agreement.

(b) Since about October 23, 2018, the Employer has performed work on the IPC Energy Savings Performance, Oahu, Hawaii Project.

(c) The work performed by the Employer on the IPC Energy Savings Performance, Oahu, Hawaii Project is part of the U.S. Army Hawaii Residential Communities Initiative Project, which is covered by the Ohana Stabilization Agreement's terms.

(d) The Ohana Stabilization Agreement, by its own terms, supersedes any other collective-bargaining agreements to which its signatories may be parties.

(e) Since about August 9, 2019, Respondent has filed and pursued a grievance against the Employer concerning work performed as part of the IPC Energy Savings Performance, Oahu, Hawaii Project pursuant to a collective-bargaining agreement between Respondent and the Plumbing & Mechanical Contractors Association of Hawaii (PAMCA), a separate agreement from the Ohana Stabilization Agreement.

(f) During all material times, Respondent has failed and refused to file and pursue the grievance against the Employer concerning work performed as part of the IPC Energy Savings Performance, Oahu, Hawaii Project pursuant to the dispute resolution procedures set forth in the Ohana Stabilization Agreement.

(g) Based on its conduct described in subparagraphs 7(e) through 7(f), Respondent has repudiated and been refusing to adhere to the collective-bargaining agreement described above in subparagraph 7(a) since at least August 9, 2019.

8. By the conduct described above in paragraph 7, Respondent has been failing and refusing to bargain collectively and in good faith with an employer in violation of Section 8(b)(3) of the Act.

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

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 20, 2020**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must 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. 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 MAY 19, 2020, at 9:00 a.m., at Room 7-241, 300 Ala Moana Boulevard, Honolulu, Hawaii, 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 Honolulu, Hawaii this 6th day of March, 2020:

JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20, BY



DALE K. YASHIKI
OFFICER-IN-CHARGE
NATIONAL LABOR RELATIONS BOARD
SUBREGION 37
300 Ala Moana Blvd Rm 7-245
Honolulu, HI 96850-7245

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 20-CB-251372

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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and

Case 20-CB-251372

RPS MECHANICAL, INC.

AMENDMENT TO COMPLAINT

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, IT IS ORDERED that the Complaint issued on March 6, 2020, be amended as follows:

- I. Amend and replace the name of the Respondent with the following:

Local 675 Of The United Association Of Journeymen And Apprentices Of The
Plumbing & Pipe Fitting Industry Of The United States And Canada, a/k/a
Plumbers & Fitters UA Local 675, a/k/a Plumbers & Fitters Local 675
- II. Amend and replace subparagraph 2(b) with the following:
 2. (b) During the calendar year ending December 31, 2019, the
Employer, in conducting its operations described above in subparagraph 2(a), has
purchased and received goods valued in excess of \$50,000 at its facility in the
State of Hawaii directly from points outside the State of Hawaii and from other
enterprises, including Admor HVAC Products, Inc., located within the State of
Hawaii, each of which other enterprises had received the goods directly from
points outside the State of Hawaii.
- III. Amend and add the following subsection to paragraph 5 beneath subsection 5(ii):

EXHIBIT 2

- (iii) Herbert Kaopua, Sr. - Business Manager/Financial Secretary in 2004 and 2005

IV . Amend and replace subparagraphs 7(e) and 7(f) with the following:

7. (e) Since about August 9, 2019, Respondent, through its named and unnamed agents, has filed and pursued a grievance against the Employer concerning work performed as part of the IPC Energy Savings Performance, Oahu, Hawaii Project pursuant to a collective-bargaining agreement between Respondent and the Plumbing & Mechanical Contractors Association of Hawaii (PAMCA), a separate agreement from the Ohana Stabilization Agreement.
7. (f) During all material times, Respondent, through its named and unnamed agents, has failed and refused to file and pursue the grievance against the Employer concerning work performed as part of the IPC Energy Savings Performance, Oahu, Hawaii Project pursuant to the dispute resolution procedures set forth in the Ohana Stabilization Agreement.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Amendment to Complaint. **The answer must be received by this office on or before JULY 15, 2020.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must 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. 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 Amendment to Complaint are true.

NOTICE OF HEARING

AS PREVIOUSLY NOTICED, on AUGUST 11, 2020, at 9:00 a.m., at Room 7-241, 300 Ala Moana Boulevard, Honolulu, Hawaii, or in a manner (including via video conference technology) or at a location otherwise ordered by the administrative law judge, 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 the Complaint and this Amendment to 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 Honolulu, Hawaii this 1st day of July, 2020:

JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20, BY



DALE K. YASHIKI
OFFICER-IN-CHARGE
NATIONAL LABOR RELATIONS BOARD
SUBREGION 37
300 Ala Moana Blvd Rm 7-245
Honolulu, HI 96850-7245

Attachments

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THE U.S. & CANADA, LOCAL UNION 675**

and

Case 20-CB-251372

RPS MECHANICAL INC.

ORDER RESCHEDULING HEARING

By agreement of the parties, **IT IS HEREBY ORDERED** that the hearing in the above-entitled matter is rescheduled from May 19, 2020 at 9:00 AM to 9:00 AM on **August 11, 2020** at 300 Ala Moana Boulevard, NLRB Hearing Room 7-241, Honolulu, HI 96850. The hearing will continue on consecutive days until concluded.

Dated: April 2, 2020

JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20, BY



DALE K. YASHIKI
OFFICER-IN-CHARGE
NATIONAL LABOR RELATIONS BOARD
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