

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

R & S WASTE SERVICES, LLC,)	
)	
Petitioner,)	
)	
v.)	Case No. 13-1042
)	
NATIONAL LABOR RELATIONS BOARD,)	
)	
Respondent.)	
)	
)	

**THE NATIONAL LABOR RELATIONS BOARD’S MOTION TO DISMISS
FOR LACK OF JURISDICTION**

The National Labor Relations Board (“the Board”) respectfully moves the Court to dismiss the Petition for Review for lack of jurisdiction. The Petitioner, R&S Waste Services, LLC (“R&S Waste”) seeks review of the Board’s orders denying Petitioner’s Motion to Dismiss Complaint (*R&S Waste Servs., LLC*, 2012 WL 3200639 (Aug. 7, 2012)), and denying a petition to revoke Board subpoena *duces tecum* B-625211 (*R&S Waste Servs., LLC*, 2012 WL 826593 (March 12, 2012)). As explained below, the instant Petition for Review should be dismissed for lack of jurisdiction because neither Board order is a “final order” within the meaning of Section 10(f) of the National Labor Relations Act. 29 U.S.C. § 160(f).

BACKGROUND

On May 31, 2012, the Regional Director of Region 2 (the “Region”), on behalf of the Board’s Acting General Counsel, issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing (“Complaint”) alleging various violations of the National Labor Relations Act (“NLRA” or “Act”) (Board Exhibit 1).¹ With respect to Petitioner, the Complaint specifically alleges: that R&S Waste, as the alter ego or successor to Rogan Brothers Sanitation, Inc. (“Rogan Brothers”), violated Section 8(a)(5) of the Act, 29 U.S.C. § 158(a)(5), by refusing to bargain in good faith with Local 813, International Brotherhood of Teamsters (“Local 813”); that R&S Waste, by and through its agents, violated Sections 8(a)(1) and (2) of the Act, 29 U.S.C. §§ 158(a)(1) and (2), by rendering unlawful assistance and support to International Union of Journeyman and Allied Trades, Local 726 (“Local 726”) and voluntarily recognizing Local 726 at a time when the company had a duty to recognize and bargain with Local 813; that R&S Waste, by and through its agents, violated Section 8(a)(1) of the Act, 29 U.S.C. § 158(a)(1), by requiring employees to withdraw from Local 813 as a condition of continued employment and by telling employees that they were being laid off because of their membership in Local 813; and that R&S Waste, by and through its

¹ For the Court’s convenience, the Board exhibits referred to herein have been attached to this memorandum.

agents, violated Sections 8(a)(1) and (3) of the Act, 29 U.S.C. §§ 158(a)(1) and (3), by discharging or refusing to hire employees because of their membership in Local 813. On June 13, 2011, Petitioner filed an answer denying all substantive allegations set forth in the Complaint. (Board Exhibit 2).

Prior to the issuance of Complaint, and during the course of the Region's investigation of the underlying unfair labor practice charges, an investigatory subpoena *duces tecum* (B-625211) was served upon R&S Waste requiring the production of various documents. (Board Exhibit 3). The subpoena was served upon Petitioner on December 30, 2011, and requested documents related to allegations that R&S Waste was an alter ego of Rogan Brothers and/or shared a single employer, joint employer or successor relationship with Rogan Brothers. The documents sought included, among other things: financial statements prepared or filed by R&S Waste and Rogan Brothers, documents showing any financial transactions between these two companies and their affiliated and/or subsidiary entities, documents identifying any assets held or controlled by the companies as well as the disposition of previously held assets, payroll records listing the names of employees and supervisors at the companies and their affiliated and/or subsidiary entities, and bank records such as invoices, checks and deposit records.

On January 5, 2012, R&S Waste filed with the Region a petition to revoke the subpoena *duces tecum* pursuant to Section 102.31(b) of the Board's Rules and

Regulations, 29 C.F.R. §102.31(b), which was subsequently referred to the Board. The company argued that the subpoena should be revoked either because it was irrelevant, overbroad, or unduly burdensome, and that there was no factual or legal basis to support the alternate theories of liability being investigated by the Region. (Board Exhibit 4). The petition to revoke also asserted in very general language that the charges against R&S Waste were frivolous, and that the Region was “utilizing its process to harass [the company].” *Id.* at 1-2. On March 12, 2012, the Board issued an order denying the petition to revoke, which stated that “the subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought as required by [] the Act and [] the Board’s Rules and Regulations.” 2012 WL 826593 at *1 (Order attached as Exh. B to Petition for Review). The Order further indicated that Petitioner had failed to establish any other legal basis for revoking the subpoena. *Id.*

After the Board issued its March 12, 2012 Order, Petitioner made a partial production of material to the Region. Although this production did not contain all of the documents required by the subpoena *duces tecum* (B-625211), the Region

did not initiate enforcement proceedings in the district court to compel Plaintiff to provide the outstanding documents.²

A few months later, R&S Waste filed a Motion to Dismiss Complaint with the Board, pursuant to Section 102.24 of the Board's Rules and Regulations. 29 C.F.R. §102.24.³ The Region opposed the motion, and by order dated August 7, 2012, the Board denied the Motion to Dismiss Complaint on the basis that R&S Waste "ha[d] failed to establish that there [were] no material issues of fact and that it [was] entitled to judgment as a matter of law." 2012 WL 3200639 at *1 (Order attached to Petition for Review). Thereafter, an evidentiary hearing was commenced before an administrative law judge ("ALJ") to resolve the disputed issues. Those proceedings are ongoing, and currently pending before the administrative law judge is a motion to close the hearing record and an opposition to that motion requesting that Petitioner be allowed to present additional evidence and/or testimony.

² Additional trial subpoenas were subsequently issued to Petitioner, again seeking some of the same outstanding documents. They are not at issue here.

³ Pursuant to 102.24(b) of the Board's Rules and Regulations, the Board in its discretion may deny a motion for summary judgment or a motion to dismiss the complaint "where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist." 29 C.F.R. 102.24(b).

R&S Waste's present Petition for Review notably does not assert a jurisdictional basis on which this Court may act. Based on a letter dated February 4, 2013 that R&S Waste sent to the administrative law judge handling the ongoing administrative proceedings (Board Exhibit 5), Petitioner presumably believes that this Court has jurisdiction to review the March 12, 2012 and August 7, 2012 Orders in light of this Court's recent decision in *Noel Canning v. NLRB*, 2013 WL 276024 (D.C. Cir. Jan. 25, 2013).

ARGUMENT

Under the NLRA, any person "aggrieved by a final order of the Board" may obtain review of such order in an appropriate United States circuit court of appeals. 29 U.S.C. § 160(f). The language of Section 10(f) plainly states that in order to seek review, a petitioner must be "aggrieved" by a "final order" of the Board. This Court lacks jurisdiction to review any Board action which does not constitute a "final order." *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938).

It is well settled that the term "final order," as used in Section 10(f), refers to a Board order that either finds that an unfair labor practice was committed and directs a remedy, or dismisses the unfair labor practice complaint.⁴ As this Circuit

⁴ *E.g.*, *United Aircraft v. McCulloch*, 365 F.2d 960, 961 (D.C. Cir. 1966)("In the present proceeding, far from the action being final, the hearings are continuing before the Board. No action has been taken sustaining or dismissing the charges filed by the General Counsel . . ."); *Harrison Steel Castings Co. v. NLRB* 923 F.2d 542, 545 (7th Cir. 1991)("until the Board takes coercive action against a

recently explained in *Stephens Media, LLC v. NLRB*, “[t]o be final and, hence, reviewable, an agency action ‘must mark the consummation of the agency’s decisionmaking process – it must not be of a merely tentative or interlocutory nature.’” 677 F.3d 1241, 1249 (D.C. Cir. 2012). Accordingly, until such time as the Board has made a determination on the merits of an unfair labor practice case, there is no “final order” of the Board, and thus no basis for judicial review under Section 10(f).

The statutory restriction of review to “final orders” is consistent with the well-established judicial doctrine of exhaustion of administrative remedies, which is “a rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been

charged party in the form of a remedial order . . . the party has not been aggrieved within the meaning of § 10(f)”; *Shell Chem. Co. v. NLRB*, 495 F.2d 1116, 1120 (5th Cir. 1974) (the phrase “final order of the Board” refers solely to one that dismisses or remedies alleged unfair labor practices – that serves as the “culmination of the procedure described in Section 10(b) and (c) of the Act [29 U.S.C. § 160(b) & (c)]”); *Lincourt v. NLRB*, 170 F.2d 306, 307 (1st Cir. 1948) (“final order” under Section 10(f) “solely” refers “to an order of the Board either dismissing a[n unfair labor practice] complaint in whole or in part or directing a remedy for the unfair labor practices found”) (internal quotations omitted). *See also J.P. Stevens Employees Educ. Comm. v. NLRB*, 582 F.2d 326, 328 (4th Cir. 1978) (“[i]t is well established that orders issued by the Board during the course of lawful administrative proceedings are not reviewable until termination of the proceedings and entry of a final order”) (citing *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 48 n.5 (1938)); *Decaturville Sportswear Co. v. NLRB*, 573 F.2d 929, 930 (6th Cir. 1978) (dismissing petition for review because Board order directing reopening of record and remanding for further hearings was not “final”).

exhausted.” *Myers*, 303 U.S. at 50-51. The “final order” requirement is thus a critical one, and is required to avoid the very piecemeal review and disruption of the administrative process that R&S Waste seeks here.⁵ *E.g.*, *Stephens Media*, 677 F.3d at 1249, citing *Exportal Ltda. v. United States*, 902 F.2d 45, 48 (D.C. Cir. 1990); *Public Citizen Health Research v. FDA*, 740 F.2d 21, 30 (D.C. Cir. 1984)(“The requirement of finality permits ‘the agency an opportunity to correct its own mistakes and to apply its expertise’ and prevents ‘piecemeal review which at the least is inefficient and upon completion of the agency process might prove to have been unnecessary”). In this case, neither Board order challenged by Petitioner is a “final order” subject to judicial review.

I. The Board’s August 7, 2012 Order Denying Petitioner’s Motion to Dismiss the Complaint Is Not a Final Order Reviewable Under Section 10(f) of the NLRA.

The August 7, 2012 Board Order challenged by R&S Waste is not a “final order” subject to judicial review, for it plainly does not represent the culmination of the Board proceedings in the instant case. The August 7th Order neither dismisses the unfair labor practice complaint, nor finds that the underlying unfair labor practice allegations have merit. Indeed, the order does not finally resolve any

⁵ The doctrine of finality has been incorporated into the Administrative Procedures Act, 5 U.S.C. Section 704, which requires that agency action be “final” before judicial review. Section 704 further states that a “preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action.”

substantive or remedial issues. Rather, the Board simply found that Petitioner's Motion to Dismiss Complaint failed to establish the absence of genuine issues, and that an administrative hearing should be commenced. *See Harrison Steel Castings Co. v. NLRB*, 923 F.2d 542, 545 (7th Cir. 1991)("[A] charged party may only seek judicial review of Board orders—not Board 'findings,' or 'charges,' or 'actions' . . ."); *cf. American Airlines, Inc. v. Herman*, 176 F.3d 283, 289, 291-293 (5th Cir. 1999)(holding that Assistant Secretary's order denying American's motion for summary judgment and remanding for further administrative proceedings on the merits was not a "final agency action" invoking immediate review under the APA).

Indeed, the Board's administrative proceedings are ongoing. A hearing began on August 14, 2012, and is not yet concluded. After the development of a full record concerning the unfair labor practice issues, the administrative law judge will issue his decision and recommended order, and the parties will be entitled to file exceptions with the Board in accordance with Section 102.46 of the Board's Rules and Regulations (29 C.F.R. § 102.46). If exceptions are filed, the Board in turn will issue a final decision and order adjudicating the unfair labor practice issues. At that time, if R&S Waste is aggrieved, it may seek judicial review of that Board order. Accordingly, the August 7, 2012 Order can only be described as interlocutory and non-final, and one which the Court may not review at this time. *See Augusta Bakery Corp. v. NLRB*, 846 F.2d 445, 446 (7th Cir. 1988)(where the

Board's administrative case was proceeding, "[the] case is far from over," and no subject matter existed to review the petition).

To the extent R&S Waste's February 4, 2013 letter suggests that *Noel Canning* provides this Court with jurisdiction to entertain his petition (*see* Board Exhibit 5), that decision does not transform an interlocutory order into a "final order" under Section 10(f) of the Act. Exhaustion of administrative remedies is required even where there are constitutional objections to the agency's functioning. For instance, in *Myers*, where the petitioner claimed that the Board's exercise of jurisdiction over it was unconstitutional, the Supreme Court found that exhaustion of petitioner's normal administrative remedies was nonetheless required, and therefore that the requested injunction should be denied. 303 U.S. at 50. The Court reasoned that in reviewing a final order of the Board, the circuit courts can address "all questions of the jurisdiction of the Board and the regularity of its proceedings, *all questions of constitutional right* or statutory authority" *Id.* at 49 (emphasis added). Thus, as explained in *Myers*, dismissal of the instant petition will not deny R&S Waste meaningful judicial review. Should R&S Waste later become aggrieved by a final Board order issued at the conclusion of the administrative proceedings, the company can then seek judicial review of that final Board order and argue the issues it prematurely raises here.

II. Section 11(2) of the NLRA Does Not Grant Jurisdiction to this Court to Review the Board's March 12, 2012 Order Denying R&S Waste's Petition to Revoke Subpoena *Duces Tecum* B-625211.

Nor is the March 12, 2012 Board order denying R&S Waste's petition to revoke the subpoena a final order reviewable by this Court. The Board's authority to issue subpoenas and the mechanism for judicial subpoena enforcement is set forth in Section 11 of the NLRA, 29 U.S.C. § 161. Section 11(1) of the NLRA directs the Board to issue a subpoena "upon application of any party" in an unfair labor practice proceeding. Section 11(1) further provides that, upon issuance of a subpoena *duces tecum*, the person upon whom the subpoena is served may move the Board to revoke the subpoena within five days:

and the Board shall revoke such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required.

29 U.S.C. §161(1). In implementing this statutory authority, the Board has promulgated regulations which provide that petitions to revoke "if made prior to the hearing, shall be filed with the Regional Director and the Regional Director shall refer the petition to the administrative law judge or the Board for ruling." NLRB Rules and Regulations §102.31(b), 29 C.F.R. §102.31(b). In comparison, petitions to revoke made during a hearing are to be filed with the administrative law judge. *Id.*

Even where the Board has ruled that a party must comply with a subpoena, the Board lacks independent enforcement power. In order to compel compliance, the Board must seek enforcement in a district court -- not a court of appeals -- pursuant to Section 11(2) of the NLRA (29 U.S.C. §161(2)). *See also Myers*, 303 U.S. at 49; *Maurice v. NLRB*, 691 F.2d 180, 183 (4th Cir. 1982). And it is only the Board that can seek such enforcement. Section 11(2) of the NLRA limits the grant of jurisdiction to the district courts and to cases brought “upon application *by the Board*” (emphasis added). 29 U.S.C. §161(2). Nothing in Section 11(2) authorizes the district courts to assume jurisdiction over actions commenced by private parties concerning Board subpoenas. *Id.* Thus, it has been held that district courts lack jurisdiction to entertain actions brought by private litigants to enforce Board subpoenas.⁶ Likewise, the district courts lack jurisdiction to quash Board subpoenas in advance of enforcement proceedings initiated by the agency.⁷

⁶ *See, e.g., NLRB v. Dutch Boy, Inc.*, 606 F.2d 929, 932 (10th Cir. 1979)(affirming district court's dismissal of Dutch Boy's cross-application to enforce its subpoena for lack of jurisdiction); *Wilmot v. Doyle*, 403 F.2d 811, 814 (9th Cir. 1968)(only the Board and not private litigants could apply to the district court for enforcement of subpoenas).

⁷ *Maurice*, 691 F.2d at 183 (target of NLRB subpoena cannot invoke district court jurisdiction to enjoin Board from seeking enforcement of the subpoena); *see also NLRB v. Cable Car Advertisers, Inc.*, 319 F.Supp.2d 991, 996 (N.D. Cal. 2004)(“[A] party receiving a subpoena . . . may raise appropriate defenses once in district court but has no ability itself to file an independent motion such as a motion to quash”).

As shown above, since “the NLRB cannot even enforce its subpoena without recourse to the courts,” *Maurice*, 691 F.2d at 183, if a subpoenaed party’s petition to revoke is denied by the Board, that party can simply stand its ground and refuse to produce the subpoenaed records. The Board will then be forced to seek district court enforcement to obtain compliance with the subpoena. Here, although the statutory scheme permits it to do so, the Board did not seek to enforce the subpoena *duces tecum* against R&S Waste. Nevertheless, Petitioner has rushed into court even though, as explained above, Section 11(2) of the NLRA does not authorize the courts of appeals to review actions brought by private litigants seeking judicial interference with Board subpoenas in advance of enforcement proceedings initiated by the Board before a district court. In sum, the March 12, 2012 Board Order challenged by Petitioner is simply not a “final order” subject to judicial review in this Court under Section 10(f).

Accordingly, R&S Waste’s petition for review should be dismissed for lack of jurisdiction because both of the Board orders challenged by Petitioner are non-final, interlocutory orders.

CONCLUSION

For all of these reasons, the National Labor Relations Board respectfully requests that this Court grant its motion to dismiss the petition for review.

Respectfully submitted,

ABBY PROPIS SIMMS
Acting Assistant General Counsel,
Special Litigation Branch
D.C. Bar No. 913640

/s/ Nancy E. Kessler Platt
NANCY E. KESSLER PLATT
Supervisory Attorney,
Special Litigation Branch
Phone: (202) 273-2937
Fax: (202) 273-1799
Email: Nancy.Platt@nlrb.gov
D.C. Bar No. 425995

MARISS A. WAGNER
Attorney

National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570

Attorneys for Respondent

Dated: March 11, 2013

CERTIFICATE OF SERVICE

This is to certify that the foregoing was filed electronically on this 11th day of March, 2013 in accordance with the Court's Electronic Filing Guidelines.

Notice of this filing will be sent to all parties by operation of the Court's Electronic Filing System. Parties may access this filing through the Court's Filing System.

/s/ Nancy E. Kessler Platt
NANCY E. KESSLER PLATT

Board Exhibit 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**ROGAN BROTHERS SANITATION, INC., AND
R&S WASTE SERVICES, LLC as
Alter Ego/Single Employer and/or
Successor**

RESPONDENT

AND

**INTERNATIONAL UNION OF JOURNEYMEN AND
ALLIED TRADES, LOCAL 726**

RESPONDENT

**Case No. 02-CA-065928
Case No. 02-CA-065930
Case No. 02-CA-066512**

AND

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 813**

CHARGING PARTY

Case No. 02-CB-069408

**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 the charges filed by the International Brotherhood of Teamsters, Local 813 (herein "Local 813") in Case No. 02-CA-065928 against R&S Waste Services, LLC (herein "R&S Waste"); in Case Nos. 02-CA-065930 and 02-CA-066512 against Rogan Brothers Sanitation, Inc. (herein "Rogan Brothers"); and in Case No. 02-CB-069408 against the International Union of Journeymen and Allied Trades, Local 726 (herein "Local 726") are consolidated. "Respondent" when used herein will refer to Rogan Brothers and R&S Waste collectively as alter egos as set forth below in

paragraphs 2(f) through (i) or in the alternative, to R&S Waste acting as the successor to Rogan Brothers as set forth below in paragraphs 2(j) through (m).

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, 29 U.S.C. § 151 et seq. (herein the “Act”) and Section 102.15 of the National Labor Relations Board’s (herein the “Board”) Rules and Regulations, and alleges Respondent and Local 726 have violated the Act by engaging in the following unfair labor practices:

1. (a) The charge in Case No. 02-CA-065930 was filed by Local 813 on September 29, 2011, and a copy was served by regular mail on Rogan Bros. on October 3, 2011.

(b) The charge in Case No. 02-CA-065928 was filed by Local 813 on September 30, 2011, and a copy was served by regular mail on R&S Waste on October 3, 2011.

(c) The first amended charge in Case No. 02-CA-065928 was filed by Local 813 on October 3, 2011, and a copy was served by regular mail on R&S Waste on October 6, 2011.

(d) The second amended charge in Case No. 02-CA-065928 was filed by Local 813 on October 11, 2011, and a copy was served by regular mail on R&S Waste on October 21, 2011.

(e) The third amended charge in Case No. 02-CA-065928 was filed by Local 813 on November 22, 2011, and a copy was served by regular mail on R&S Waste on November 23, 2011.

(f) The charge in Case No. 02-CA-066512 was filed by Local 813 on October 11, 2011, and a copy was served by regular mail on Rogan Brothers on October 21, 2011.

(g) The charge in Case No. 02-CB-069408 was filed by Local 813 on November 22, 2011, and a copy was served by regular mail on Local 726 on November 22, 2011.

2. (a) R&S Waste is a domestic limited liability corporation, with a principal place of business at 1014 Saw Mill River Road in Yonkers, New York, herein called the Yonkers yard, engaged in commercial waste hauling in and around Westchester County, New York.

(b) Based on R&S Waste's operations, which commenced operation on or about August 1, 2011, Respondent will annually purchase and receive at the Yonkers yard goods and supplies valued in excess of \$50,000 directly from suppliers which are themselves located within the State of New York, each of which has received the goods and supplies directly from sources outside the State of New York.

(c) Rogan Brother, a domestic corporation with a principal place of business at the Yonkers yard, described above in subparagraph (a), is engaged in the business of commercial waste removal and disposal including at private homes and residences in and around Westchester County, New York.

(d) At material times Rogan Brothers, in conducting its operations described above in subparagraph (c), annually derives gross revenues in excess of \$500,000.

(e) At material times Rogan Brothers, in conducting its operations described above in subparagraph (c), annually purchases and receives at the Yonkers yard

in Yonkers New York, goods valued in excess of \$5,000 directly from suppliers of fuel and automotive parts and materials located within the State of New York, each of which other enterprises has received these goods directly from points located outside the State of New York.

(f) At material times, Rogan Brothers and R&S Waste have had substantially identical management, business purposes, operations, equipment, customers and supervision, as well as ownership.

(g) On or about February 17, 2011, R&S Waste was established by Rogan Brothers as a disguised continuation of Rogan Brothers.

(h) Rogan Brothers, established R&S Waste, as described above in subparagraph (e), for the purpose of evading its obligations under the Act.

(i) Based on the operations and conduct described above in subparagraphs (f) through (h), Rogan Brothers and R&S Waste are and have been at material times, alter egos within the meaning of the Act.

(j) On or about August 1, 2011, R&S Waste assumed the assets of Rogan Brothers.

(k) Since the date set forth above in subparagraph (j), R&S Waste has continued to operate the business of Rogan Brothers in basically unchanged form.

(l) Since on or about October 17, 2011, R&S Waste has employed as a majority of employees in the unit set forth below in paragraph 6(a), individuals who were previously employed by Rogan Brothers in the unit set forth below in paragraph 6(a).

(m) Alternatively to subparagraph (i), and based on the operations described above in subparagraphs (j) through (l), R&S Waste has continued the employing entity and is a successor to Rogan Brothers.

3. At all material times Respondent, R&S Waste and Rogan Brothers have been an employer or employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. (a) At all material times, Local 813 has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, Local 726 has been a labor organization within the meaning of Section 2(5) of the Act.

5. (a) At material times the following individuals have held the positions set forth opposite their names and have been supervisors of Respondent and/or Rogan Brothers and/or R&S Waste within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

James Rogan	President /Member
Michael Vetrano	General Manager
Peter Ligouri	Supervisor

(b) At material times, the following individuals have held positions set forth opposite their names and have been agents of Respondent and/or Rogan Brothers and/or R&S Waste within the meaning of Section 2(13) of the Act:

Joseph Spiezio III	Managing Member
Howard Kassman	Comptroller

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

All chauffeurs, helpers, mechanics, and welders employed by Respondent at the Yonkers yard and serving southern Westchester County.

(b) Since on or about December 1, 2005, Local 813 has been the exclusive collective bargaining representative of the Unit employed by Rogan Brothers, and at material times, Local 813 has been recognized as such by Rogan Brothers. This recognition was embodied in successive collective bargaining agreements, the most recent of which is effective from December 1, 2008 to November 30, 2011.

(c) Since on or about October 17, 2011, based on the facts described above in subparagraphs (a) and (b) and paragraphs 2(f) through (i) or 2(j) through (m) Local 813 has been the exclusive collective bargaining representative of the Unit.

(d) At all material times, based on Section 9(a) of the Act, Local 813 has been the exclusive collective-bargaining representative of the Unit.

7. (a) Respondent by Vetrano on or about September 30, 2011, at the Yonkers yard:

(i) told employees Respondent would no longer deal with Local 813; and

(ii) required employees to resign from Local 813 as a condition of employment at R&S Waste.

(b) On or about October 1, 2011, Respondent by Ligouri by telephone warned and advised employees that membership in Local 813 was inconsistent with continued employment by Respondent.

(c) On or about October 3, 2011, Respondent by James Rogan at the Yonkers yard, told employees that they were being laid off because they were members of Local 813.

(d) On or about October 7, 2011, Respondent by Vetrano required employees to resign from Local 813 as a condition of employment with R&S Waste.

8. (a) On or about on the dates set forth opposite their names Respondent discharged or refused to hire the following employees:

Michael Roake	October 1
Wayne Revell	October 3
Joseph Smith	October 4
Richard Zerbo	October 4

(b) Respondent failed and refused to reinstate or, in the alternative, hire the employees named above in subparagraph (a) until on or about the dates set forth opposite their names:

Michael Roake	to date
Wayne Revell	October 11
Joseph Smith	to date
Richard Zerbo	October 11

(c) Respondent engaged in the conduct described above in subparagraphs (a) and (b) because the employees named in subparagraphs (a) and (b) were members of Local 813 and in order to discourage employees from being members of and supporting Local 813 and from engaging in other protected concerted activities.

9. (a) On or about September 29, 2011, Local 813, by letter, requested that Respondent meet and bargain collectively with the Local 813 as the exclusive collective bargaining representative of the Unit.

(b) Since on or about September 29, 2011, Respondent has failed and refused to recognize, meet and bargain with Local 813 as the exclusive collective bargaining representative of the Unit.

10. (a) On or about sometime between August 1, 2011 and October 17, 2011, the exact date being unknown to General Counsel, but within the knowledge of Respondent, Respondent failed to continue in effect the terms and conditions of the collective bargaining agreement described above in paragraph 6(b), including, but not limited to Articles 11, 17, 18, and 19, thereof describing Respondent's obligation to remit dues to Local 813 and make payments to Local 813's Insurance, Trust, Pension and Severance Funds.

(b) Respondent engaged in the conduct described above in subparagraph (a) without Local 813's consent.

(c) The terms of employment described above in subparagraph (a) are mandatory subjects for the purpose of collective bargaining.

11. (a) In the alternative to the allegations in paragraph 10, on or about sometime between August 1, 2011 and October 17, 2011, the exact date being unknown to General Counsel, but within the knowledge of Respondent, Respondent made changes in the terms and conditions of employment of employees in the Unit, including, but not limited to failing and refusing to make contributions to the following Local 813 benefit funds:

- (i) Insurance Trust Fund;
- (ii) Pension Fund; and
- (iii) Severance Fund.

(b) The subjects set forth above in subparagraph (a) relate to wages, hours, and other terms and conditions of employment and are mandatory subjects for the purpose of collective bargaining.

(c) Respondent engaged in the conduct set forth above in subparagraph (a) without prior notice to the Local 813 and without affording the Local 813 an opportunity to bargain with Respondent with respect to this conduct or the effects of this conduct.

12. On various occasions between about July 1, 2011 and about October 17, 2011, the precise dates being unknown to General Counsel, but within the knowledge of Rogan Brothers, deducted dues from the paychecks of employees in the Unit, but failed to remit those dues to the Local 813.

13. (a) On or about September 29, 2011, Local 813 by letter, attached hereto as Appendix A, requested that Respondent furnish Local 813 with certain information.

(b) The information requested by Local 813, described above in subparagraph (a) is necessary for and relevant to the Local 813's performance of its duties as the exclusive collective bargaining representative of the Unit.

(c) Since on or about September 29, 2011, Respondent has failed and refused to furnish Local 813 with the information requested by it as described above in subparagraph (a) and Appendix A.

14. Between about September 23, 2011 and September 28, 2011, Respondent by its agents Michael Vetrano and Peter Ligouri at locations presently unknown to the General Counsel, but within the knowledge of Respondent, rendered assistance and support for Local 726 by soliciting authorizations from Unit employees on behalf of Local 726.

15. (a) On or about October 17, 2011, Respondent:

(i) granted recognition to Local 726 as the exclusive bargaining representative of the Unit; and

(ii) entered into a collective bargaining agreement with Local 726 for the Unit.

(b) Respondent engaged in the conduct described above in subparagraph (a) and Local 726 engaged in the conduct described above in subparagraph (b) even though Local 726 did not represent an uncoerced majority of employees in the Unit.

(c) Respondent engaged in the conduct described above in subparagraph (a) at a time when Respondent had a duty to recognize and bargain with Local 813 as the exclusive collective bargaining representative of the Unit.

16. (a) On or about October 17, 2011, Local 726;

(i) obtained recognition from Respondent as the exclusive collective bargaining representative of the Unit; and

(ii) entered into a collective-bargaining agreement for the employees in the Unit

(b). Local 726 engaged in the conduct described above in subparagraph (a) even though Local 726 did not represent an uncoerced majority of employees in the Unit.

(c) Respondent engaged in the conduct described above in subparagraph (a) at a time when Respondent had a duty to recognize and bargain with Local 813 as the exclusive collective bargaining representative of the Unit.

17. By the conduct described above in paragraph 7, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

18. By the conduct described above in paragraphs 14 and 15, Respondent has been rendering unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act.

19. By the conduct described above in paragraph 8, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

20. By the conduct described above in paragraphs 9, 10, 11, 12, and 13, 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.

21. By the conduct described above in paragraphs 16, Local 726 has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

22. The unfair labor practices of Respondent and Local 726 described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel further seeks, as part of the remedy for the allegations in paragraph 8, 10, 11 that Respondent be required to submit the appropriate documentation to the Social Security Administration, so that when back pay is paid, it will be allocated to the appropriate periods.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 8, 10, 11 the General Counsel seeks, in addition to a complete and standard back pay remedy for all violations of the Act and all other relief as may be just and proper to remedy the unfair labor practices alleged, an order requiring reimbursement of amounts equal to the difference in taxes owed upon receipt of a lump-sum payment and taxes that would have been owed had there been no discrimination.

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 (consolidated) complaint. The answer must be **received by this office on or before June 14, 2012 or postmarked on or before June 13, 2012.** 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.

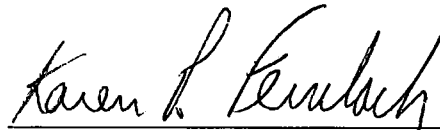
An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. 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. When an answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three 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, 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 **July 30, 2012**, at 9:30 a.m. at the **Mary Walker Taylor Hearing Room on the 36th Floor of 26 Federal Plaza, New York, New York**, 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.

Signed at New York, New York
May 31, 2012



Karen P. Fernbach, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10278-0104

Attachments

Board Exhibit 2

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 2

-----X
ROGAN BROTHERS SANITATION, INC. AND
R&S WASTE SERVICES, LLC as
Alter Ego/Single Employer and/or
Successor,

ANSWER

RESPONDENT,

AND

Case No.: 02-CA-065928

Case No.: 02-CA-065930

Case No.: 02-CA-066512

INTERNATIONAL UNION OF JOURNEYMEN AND
ALLIED TRADES, LOCAL 726

Case No.: 02-CB-069408

RESPONDENT,

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 813

CHARGING PARTY.

-----X

Respondent, International Union of Journeymen and Allied Trades, Local 726 ("Local 726"), by its attorneys, Law Offices of Richard M. Greenspan, P.C., 220 Heatherdell Road, Ardsley, New York 10502, hereby answers the Complaint as follows:

1. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1(a) of the Complaint.
2. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1(b) of the Complaint.
3. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 (c) of the Complaint.
4. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 (d) of the Complaint.

5. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 (e) of the Complaint.

6. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 (f) of the Complaint.

7. Respondent Local 726 admits the allegations set forth in paragraph 1 (g) of the Complaint.

8. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (a) of the Complaint, except admits, upon information and belief, R&S Waste is engaged in commercial waste hauling in Westchester County and that it has a place of business at Saw Mill River Road in Yonkers, New York.

9. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (b) of the Complaint.

10. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (c) of the Complaint.

11. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (d) of the Complaint.

12. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (e) of the Complaint.

13. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (f) of the Complaint.

14. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (g) of the Complaint.

15. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (h) of the Complaint.

16. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (i) of the Complaint.

17. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (j) of the Complaint.

18. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (k) of the Complaint.

19. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (l) of the Complaint.

20. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 (m) of the Complaint.

21. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the Complaint.

22. Respondent Local 726 admits the allegations contained in paragraph 4 (a) of the Complaint.

23. Respondent Local 726 admits the allegations contained in paragraph 4 (b) of the Complaint.

24. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 (a) of the Complaint, except denies the listed individuals were supervisors of R&S Waste.

25. Respondent Local 726 denies knowledge or information sufficient to form a belief

as to the truth of the allegations set forth in paragraph 5 (b) of the Complaint.

26. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 (a) of the Complaint in that it is unclear which company is referred to as the Respondent in this paragraph.

27. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 (b) of the Complaint.

28. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 (c) of the Complaint, except denies Local 813 had been the exclusive bargaining agent of employees of R& S Waste.

29. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 (d) of the Complaint, except denies Local 813 had been the exclusive bargaining agent of employees of R& S Waste.

30. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 (a)(i) of the Complaint.

31. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 (a)(ii) of the Complaint.

32. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 (b) of the Complaint.

33. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 (c) of the Complaint.

34. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 (d) of the Complaint.

35. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 (a) of the Complaint.

36. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 (b) of the Complaint.

37. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 (c) of the Complaint.

38. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 (a) of the Complaint.

39. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 (b) of the Complaint.

40. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 (a) of the Complaint.

41. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 (b) of the Complaint.

42. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 (c) of the Complaint.

43. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 11(a)(i), 11(a)(ii), and 11(a)(iii) of the Complaint.

44. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 (b) of the Complaint.

45. Respondent Local 726 denies knowledge or information sufficient to form a belief

as to the truth of the allegations set forth in paragraph 11 (c) of the Complaint.

46. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Complaint.

47. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 (a) of the Complaint.

48. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 (b) of the Complaint.

49. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 (c) of the Complaint.

50. Respondent Local 726 denies the allegations set forth in paragraph 14 of the Complaint.

51. Respondent Local 726 set forth in paragraph 15 (a)(i) of the Complaint, except admits R&S Waste granted recognition to Local 726 based on the authorization of an uncoerced majority of its employees.

52. Respondent Local 726 denies the allegations set forth in paragraph 15 (a)(ii) of the Complaint, except admits R&S Waste entered into a contract with Local 726.

53. Respondent Local 726 denies the allegations contained in paragraph 15 (b) of the Complaint.

54. Respondent Local 726 denies the allegations contained in paragraph 15 (c) of the Complaint.

55. Respondent Local 726 admits the allegations contained in paragraph 16 (a)(i) of

the Complaint.

56. Respondent Local 726 denies the allegations contained in paragraph 16 (a)(ii) of the Complaint, except admits it entered onto a collective bargaining agreement covering a bargaining unit of R&S Waste employees.

57. Respondent Local 726 denies the allegations contained in paragraph 16 (b) of the Complaint.

58. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 (c) of the Complaint.

59. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the Complaint.

60. Respondent Local 726 denies the allegations contained in paragraph 18 of the Complaint.

61. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Complaint.

62. Respondent Local 726 denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the Complaint.

63. Respondent Local 726 denies the allegations contained in paragraph 21 of the Complaint.

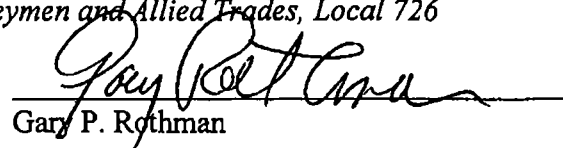
64. Respondent Local 726 denies the allegations contained in paragraph 22 of the Complaint.

WHEREFORE, Respondent Local 726 prays that the complaint be dismissed in its entirety, for recovery of reasonable attorney's fees in defense of this action, costs and disbursements, and for

such other and further relief as may be just in the premises.

Law Offices of Richard M. Greenspan
*Attorneys for Respondent International Union of
Journeyman and Allied Trades, Local 726*

By:


Gary P. Rothman

Dated: June 13, 2012

f:\ujat\726\R&S\Waste\Answer 061312

Board Exhibit 3



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 2
26 Federal Plaza – Room 3614
New York, New York 10278-0104

Telephone: (212) 264-0300

Facsimile: (212) 264-2450

December 28, 2011

Michael Mauro, Esq.
Milman Labuda Law Group PLLC
3000 Marcus Avenue, Suite 3W8
Lake Success, NY 11042

Re: R&S Waste Services, LLC
Case No. 02-CA-065928

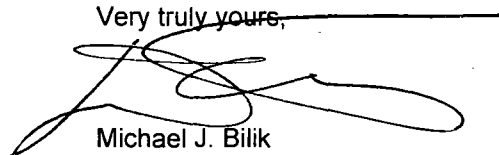
Rogan Brothers Sanitation, Inc.
Case No. 02-CA-065930

Dear Mr. Mauro:

Enclosed you will find a subpoena duces tecum issued to your clients in the above-referenced matters. In the event it is not possible to produce the documents by the return date, January 12, 2012, please contact me in order to negotiate a brief extension.

I am available by phone at (212) 264-0360 and by FAX at (212) 264-2450 and by email at Leah.Jaffe@NLRB.gov. Please feel free to contact me with any questions or concerns pertaining to this matter.

Very truly yours,



Michael J. Bilik

Enc.

CC: R&S Waste Services LLC
Custodian of the Records
500 Mamaroneck Avenue, Ste 320
Harrison, NY 10528

Rogan Brothers Sanitation, Inc.
Custodian of the Records
1014 Saw Mill River Road
Yonkers, NY 10710

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of the Records R&S Waste Services, LLC
500 Maroneck Avenue, Suite 320
Harrison, NY 10528

As requested by Elbert F. Tellem, Acting Regional Director, Region 2

whose address is 26 Federal Plaza, Room 3614 New York, NY 10278-0179
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Michael J. Bilik, Board Agent

or any other designated Board Agent of the National Labor Relations Board

at 26 Federal Plaza, Room 3614

in the City of New York, New York 10278-0179

on the 12th day of January 2012 at 9:30 (a.m.) ~~(p.m.)~~ or any adjourned

or rescheduled date to testify in R&S/Rogan Brothers Case Nos. 02-CA-065928 et al.

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

(See attachment for description of documents)

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B - 625211

Issued at New York, New York



this 29th day of December 2011

Leslie A. Neltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

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 mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

RETURN OF SERVICE

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- by person
- by certified mail
- by registered mail
- by telegraph
- by leaving copy at principal office or place of business at:

(Check method used.)

on the named person on _____

//

(Month, day, and year)

(Name of person making service)

(Official title, if any)

CERTIFICATION OF ATTENDANCE

I certify that named person was in attendance as a witness at _____

on _____ direc
(Month, day or days, and year)

(Name of person certifying)

(Official title)

APPENDIX A

DEFINITIONS AND INSTRUCTIONS

- A. The word “document” or “documents” means any existing printed, typewritten, handwritten, or otherwise recorded matter of whatever character, records stored on computer or electronically, including without limitation, letters, e-mails, licenses, memoranda, facsimile transmissions, telegrams, minutes, notes, contracts, transcripts, diaries, reports, calendars, payroll records, interoffice communications, statements, affidavits, photographs, microfilm, audio or video tapes, computer printouts, computer discs and all data contained thereon, and any such material in the possession of, control of, or available to the subpoenaed party, or any attorney, agent, representative or other persons acting in cooperation with, in concert with, or on behalf of said subpoenaed party.
- B. The word “person” or “persons” means natural person, corporations, partnerships, sole proprietorships, associations or any other kind of entity.
- C. Unless otherwise stated, each item in the subpoena covers the period from July 1, 2010 to date. The subpoena requests are continuing in nature and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.
- D. R&S Waste Services, LLC is referred to herein as “R&S Waste Services”; Pinnacle Equity Group, LLC is referred to herein as “Pinnacle Equity”; Rogan Brothers Sanitation, Inc., is referred to herein as “Rogan Brothers”; Spiezio Organization, LLC, is referred to herein as “Spiezio Organization”; Industrial Recycling of New York City, Inc., is referred to herein as “Industrial Recycling”; ARJR Trucking, Inc., is referred to herein as “ARJR Trucking”; ARJR Holding, Inc., is referred to herein as “ARJR Holding”; Rogan RR LLC, is referred to herein as “Rogan RR”; Saw Mill Recovery Inc., is referred to herein as “Saw Mill Recovery”; and Sprain Mill Associates, Inc. is referred to herein as “Sprain Mill Associates.”
- E. Whenever used herein, the singular shall be deemed to include the plural and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to refer to any and all of their owners, officers, representatives and agents; and the masculine shall be deemed to include the feminine and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and” and vice versa; and the words “each”, “every”, “any”, and “all” shall be deemed to include each of the other words.
- F. All documents are requested in their original form, without abbreviation, redaction or expurgation; true copies may be provided if the original document is not available, but must be identified as copies.

G. As to any documents not produced in compliance with this subpoena on any ground or if any requested document was, through inadvertence or otherwise, destroyed, state or describe:

1. the author;
2. the recipient;
3. the name of each person;
4. the date of the document;
5. the subject matter of the document; and
6. the circumstances under which the document was destroyed or withheld.

H. All documents produced pursuant to this subpoena are to be organized and referenced by the numbered subpoenaed paragraph(s) to which each document or set of documents is responsive.

DOCUMENTS SUBJECT TO SUBPOENA**Items to be Produced**

1. Documents, including but not limited to payroll records, which show a complete listing of names, addresses of all employees and supervisors employed by R&S Waste Services from its inception, and employed by Rogan Brothers Sanitation and Industrial Recycling, since January 1, 2011, showing wages and benefits paid, dates of hire and termination, job titles and classifications, and job location including the yard out of which each employee operated.
2. Documents, including but not limited to all schedules, routes, and dispatcher records for all drivers and helpers, which will show assignments for all drivers and helpers and the location from which they operated.
3. Documents that will show the names, addresses and phone numbers of all customers or clients of R&S Waste Services, Rogan Brothers, and Industrial Recycling.
4. Documents, including but not limited to bank records that will show all financial transactions between Joseph Spiezio, James Rogan, Michael Vetrano, and Peter Ligouri, and their agents and spouses, during the relevant time period.
5. Documents, including but not limited to bank records that will show all financial transactions between R&S Waste Services, Rogan Brothers, Pinnacle Equity, Spiezio Organization, Industrial Recycling, ARJR Trucking, ARJR Holding, Rogan RR, Saw Mill Recovery and Sprain Mill Associates, during the relevant time period.
6. Documents, including but not limited to bank records that will show all financial transactions between Joseph Spiezio, James Rogan, Michael Vetrano, Peter Ligouri, their agents and spouses, and R&S Waste Services, Rogan Brothers, Pinnacle Equity, Spiezio Organization, Industrial Recycling, ARJR Trucking, ARJR Holding, Rogan RR, Saw Mill Recovery and Sprain Mill Associates, during the relevant time period.
7. Documents, including but not limited to general ledgers, tax returns, auditor's reports, and other financial statements or documents from FY 2010 to the date of the testimony provided herein for R&S Waste Services, Rogan Brothers Sanitation, and Industrial Recycling.
8. Documents, including all types of correspondence, between James Rogan, Joseph Spiezio, and Michael Vetrano in which they discuss the financial condition of Rogan Brothers or any of Rogan's related entities, including ARJR Trucking,

ARJR Holding, Rogan RR, Saw Mill Recovery, and Sprain Mill Associates, during the relevant time period.

9. Documents that will show the valuation of all assets used as collateral in the January 3, 2011 Security Agreement between Rogan Brothers and Pinnacle Equity, referenced in that agreement as Appendix A and in the May 25, 2011 UCC Lien, filing number 201105258174216.
10. Documents, including but not limited to cancelled checks and deposit records, that refer to or mention the loan of \$800,000 from Pinnacle Equity to Rogan Brothers; including but not limited to documents that reflect evidence or refer to the transfer of funds that will show whether and how the funds lent to Rogan Brothers from Pinnacle Equity were actually spent; and that will show whether Rogan Brothers repaid any part of the loan pursuant to the January 3, 2011 Security Agreement between Rogan Brothers and Pinnacle Equity.
11. Certificates of Incorporation, including all amendments thereto, for Rogan Brothers, Industrial Recycling, Spiezio Organization, ARJR Trucking, ARJR Holding, Rogan RR, Saw Mill Recovery, and Sprain Mill Associates including all Annual Reports, and minutes of all Board of Directors meetings, and documents which reflect evidence or identify the Directors and Officers of these corporations, during the relevant time period.
12. All documents that were signed, initialed, or approved by Peter Ligouri; all documents that will show Peter Ligouri's job title and job description; and all documents that will show his assignments, routes, or schedules as an employee of R&S Waste Services, Rogan Brothers Sanitation, and owner of Industrial Recycling, from January 1, 2011 to date.

Board Exhibit 4

MILMAN LABUDA LAW GROUP PLLC

3000 MARCUS AVENUE
SUITE 3W8
LAKE SUCCESS, NEW YORK 11042

TELEPHONE (516) 328-8899
FACSIMILE (516) 328-0082

Via Fax & Mail
212-264-8427

January 4, 2012

Celeste Mattina
Regional Director
National Labor Relations Board
Region 2
26 Federal Plaza
New York, NY 10278

RECEIVED
JAN 11 2012
NEW YORK, NY
5 PM 2:08

**Re: R & S Waste Services, LLC
2-CA-065928**

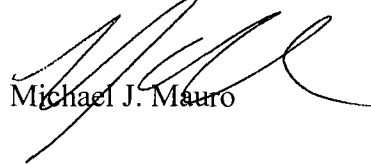
Dear Regional Director:

Enclosed you will find Respondent's Petition to Revoke. The NLRB website indicates that it cannot find the case so this hard copy is provided. This cover letter will serve as the Certificate of Service.

Thank you.

Very truly,

MILMAN LABUDA LAW GROUP PLLC



Michael J. Mauro

Cc: Michael Bilik, Esq.

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 2**

-----X
R & S Waste Services LLC

and

Case No.: 2-CA-069528

**Local 813, International Brotherhood of
Teamsters,**

-----X
PETITION TO REVOKE SUBPOENA

R & S Waste Services LLC (“Respondent”), by and through its counsel, Milman Labuda Law Group PLLC, pursuant to § 102.31(b) of the Board’s Rules and Regulations hereby petitions to revoke subpoenas *duces tecum* B-625211, (“Subpoena”) dated December 29, 2010.¹

BACKGROUND

Charging Party alleges alternative theories that Respondent is somehow obligated to recognize and bargain with it. Charging Party alleges that Respondent is either an alter ego or joint employer or a successor. Charging Party alleges additional frivolous charges against Respondent regarding unlawful coercion and unlawful assistance to the duly recognized union that Respondent’s employees chose as to be their designated representative. Charging Party is utilizing the federal government to do its dirty work and disregard the free choice of Respondent’s employees. Respondent has provided numerous position statements, affidavits and hundreds of documents to establish that it has no duty to recognize Charging Party and that it did not provide unlawful assistance. Moreover, the rightly recognized union of Respondent’s employees has provided

¹ Annexed hereto as Exhibit A are the subpoenas.

affidavits and information to refute the unlawful assistance allegation. It is time for the NLRB to dismiss the charge and stop utilizing its process to harass Respondent. The instant subpoena is a manifestation of the harassment and therefore Respondent objects to each and every item as set forth below. If the region persists it will have to explain itself before a federal district court judge of its abuse of process, harassment and civil rights violations. Additionally, Respondent will be seeking costs under EAJA.

Respondent submits this petition to revoke the subpoenas for the reasons stated below.

APPLICABLE LEGAL STANDARD AND GENERAL OBJECTIONS

Sec. 11(1) provides, in relevant part, as follows:

The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of the subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required.

The applicable test for determining the appropriateness of an administrative subpoena is 1) whether the inquiry is within the authority of the issuing agency; 2) whether the request is too indefinite; 3) whether the information sought is reasonably relevant. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). Although, the standard for determining relevance under the rules and case law governing proceedings

before the Board is very broad, the Board's Rules and Regulations § 102.31 provides a subpoena shall be revoked on relevance grounds if, in the Board's opinion, "the evidence whose production is require does not relate to any matter under investigation or in question in the proceedings." § 11(1) of the Act. *See also United States v. Morton Salt Co., at 652; NLRB v. Williams*, 396 F.2d 247, 249f (7th Cir. 1968).

Because Section 102.31 (b) of the Board's Rules and Regulations requires that a subpoena relate to any matter under investigation, requests for information that are irrelevant will not be upheld. For this reason, the Subpoenas are overbroad and unduly burdensome with respect to many, if not all demands.

Further, the NLRB Casehandling Manual (Part One) ULP, Sec. 11776 specifically cautions that "[t]he use of the word "all" in the description should be avoided wherever possible." Accordingly, the Board in *Brinks, Inc.*, 281 NLRB 468, 469 (1986), held that a request for "[a]ll minutes of meetings' and related documents" regarding non-parties did not relate to any matter in question, and "may also be revocable on the grounds that it is, inter alia, unreasonably broad." In the instant proceeding, the subpoenas in question specifically request "all" documents "referencing or relating to" a given subject matter (e.g. requests 1-12). These requests are overbroad and unduly burdensome.

SPECIFIC OBJECTIONS

(A) Respondents hereby object to Item 1 "to be produced" pursuant to the subpoena *duces tecum*. The demand requests payroll records from Rogan Brothers. Respondent does not possess such records nor is it the control of such records. Moreover, the unit at Rogan Brothers is no longer valid under the NLRA since Charging Party represents either one or none of the former unit members. *CAB Associates*, 340 N.L.R.B.

1391 (N.L.R.B. 2003); *Foreign Car Center*, 129 N.L.R.B. 319 (N.L.R.B. 1960) (Board will not find it unlawful to refuse to bargain with one man unit). Additionally, the documents are not relevant even if they were in Respondent's control. Respondent has produced relevant documents establishing that none of the altering theories of liability are valid. Consequently, additional documents are not relevant.

The request also constitutes harassment. The investigation should be terminated by this point based on the information that has been provided by Respondent, Local 726, IUJAT, and the other sources of information the region has requested. If anything, the request is a fishing expedition and is invalid. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a "blunderbluss".)

(B) Respondents hereby object to Item 2 "to be produced" pursuant to the subpoena *duces tecum*. The demand requests all schedules and route records from August 1, 2011 to the present. The documents are not relevant to any matter under investigation: it will not provide additional insight into the unlawful assistance charge and it will not provide further elucidation of the lack of any basis to continue to try and find a theory of liability to impose a recognition and bargaining obligation on Respondent. Moreover, the demand is unduly burdensome; it covers thousands of pages of documents.

(C) Respondents hereby object to Item 3 "to be produced" pursuant to the subpoena *duces tecum*. The demand requests all documents showing names of customers and contact information for those customers from August 1, 2011 to the present. The documents are not relevant to any matter under investigation: it will not provide

additional insight into the unlawful assistance charge and it will not provide further elucidation of the lack of any basis to continue to try and find a theory of liability to impose a recognition and bargaining obligation on Respondent. Again, the documents and information provided thus far establish that the alternating theories of liability are frivolous. Provision of the customers' names and contacting them to ask questions about when they became a customer does not change the lack of liability. Moreover, the demand is unduly burdensome, as it covers thousands of pages of documents. Finally, the demand is designed to harass Respondent since the region should have concluded by this time that the charges are frivolous. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a "blunderbluss".)

(D) Respondents hereby object to Item 4 "to be produced" pursuant to the subpoena *duces tecum*. The demand requests bank records showing "all financial transactions between Joseph Spiezio, James Rogan, Michael Vetrano and Peter Liguori, and their agents and spouses, during the relevant time period. This request is staggering overreach by the federal government that clearly violates the individuals' civil rights and privacy rights. See *Right to Financial Privacy Act*, 12 U.S.C. § 3405. It is severe harassment of American citizens by the federal government and cannot be tolerated. This request indicates that the region is fishing to find some proof to fit its theory. Such fishing expedition requires the subpoena to be revoked. The FBI does not even have this authority; surely the breathtaking overreach of the subpoena would be struck down by a federal judge reviewing this matter.

The request seeks information that is not relevant to any matter under investigation. First, there is no lawful unit recognized any longer at Rogan Brothers

Sanitation. Second, documents have been provided by Respondent and Rogan Brothers and third-parties that have disposed of the issues raised in the allegations; thus there is no further relevancy to the documents.

The request is also unduly burdensome because it includes thousands of documents. The request is also overbroad because it encompasses each and every purchase that the individuals have made; surely the Board knows it does not have the need for knowing when someone purchased toothpaste or other items.

Finally, the demand is designed to harass Respondent since the region should have concluded by this time that the charges are frivolous. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a “blunderbluss”.)

(E) Respondents hereby object to Item 5 “to be produced” pursuant to the subpoena *duces tecum*. The demand requests bank records that will show all financial transactions between Respondent, Rogan Brothers, Pinnacle Equity Spiezio Organization, Industrial Recycling, ARJR Trucking, ARJR Holding, Rogan RR, Saw Mill Recovery, and Sprain Mill Associates.

Respondent does not possess such records nor is it the control of such records for any entity other than itself. Moreover, the unit at Rogan Brothers is no longer valid under the NLRA since Charging Party represents either one or none of the former unit members. *CAB Associates*, 340 N.L.R.B. 1391 (N.L.R.B. 2003); *Foreign Car Center*, 129 N.L.R.B. 319 (N.L.R.B. 1960) (Board will not find it unlawful to refuse to bargain with one man unit). Additionally, the documents are not relevant even if they were in Respondent’s control. Respondent has produced relevant documents establishing that

none of the altering theories of liability are valid. Consequently, additional documents are not relevant.

The request also constitutes harassment. The investigation should be terminated by this point based on the information that has been provided by Respondent, Local 726, IUJAT, and the other sources of information the region has requested of third parties. If anything, the request is a fishing expedition and is invalid. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a “blunderbluss”.)

Moreover, the request is duplicative of the request 4 and Respondent incorporates the objections stated therein.

(F) Respondents hereby object to Item 6 “to be produced” pursuant to the subpoena *duces tecum*. The request is duplicative of requests 4 and 6. As such, Respondent incorporates by reference its objections set forth to requests 4 and 6.

(G) Respondents hereby object to Item 7 “to be produced” pursuant to the subpoena *duces tecum*. The request seeks financial statements, general ledgers, tax returns, auditor’s reports or documents from FY2010. Respondent objects to the request on the grounds that Respondent has produced information responsive to the request. Consequently, the request is unduly burdensome, and constitutes harassment as the region should have concluded based on the information that it has been provided that the charges are specious. Moreover, there is no lawful unit at Rogan Brothers sanitation, consequently, there is no matter under investigation for which the information is relevant to.

(H) Respondents hereby object to Item 8 “to be produced” pursuant to the subpoena *duces tecum*. The request seeks information that if it exists, is not in Respondent’s control. Moreover, there is no lawful unit at Rogan Brothers sanitation, consequently, there is no matter under investigation for which the information is relevant to.

Additionally, Respondent has produced information to the region that establishes that it is has no obligation to bargain with Charging Party. Consequently, the charge is nothing more than a fishing expedition designed to harass. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a “blunderbluss”.)

(I) Respondents hereby object to Item 9 “to be produced” pursuant to the subpoena *duces tecum*. Respondent has provided the information sought as such the request constitutes harassment. Consequently, the charge is nothing more than a fishing expedition designed to harass. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a “blunderbluss”.)

(J) Respondents hereby object to Item 10 “to be produced” pursuant to the subpoena *duces tecum*. Respondent has produced information to the region that establishes that it is has no obligation to bargain with Charging Party. Consequently, the charge is nothing more than a fishing expedition designed to harass. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a “blunderbluss”.) Moreover, there is no lawful unit at Rogan Brothers sanitation, consequently, there is no matter under investigation for which the information is relevant to.

(K) Respondents hereby object to Item 11 “to be produced” pursuant to the subpoena *duces tecum*. The request seeks information that if it exists, is not in Respondent’s control. Moreover, there is no lawful unit at Rogan Brothers sanitation, consequently, there is no matter under investigation for which the information is relevant to.

Additionally, Respondent has produced information to the region that establishes that it has no obligation to bargain with Charging Party. Consequently, the charge is nothing more than a fishing expedition designed to harass. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a “blunderbluss”.)

(L) Respondents hereby object to Item 12 “to be produced” pursuant to the subpoena *duces tecum*. The request seeks information that if it exists, is not in Respondent’s control. Moreover, there is no lawful unit at Rogan Brothers sanitation, consequently, there is no matter under investigation for which the information is relevant to.

Additionally, Respondent has produced information to the region that establishes that it has no obligation to bargain with Charging Party. Consequently, the charge is nothing more than a fishing expedition designed to harass. *Wal-Mart Stores, Inc.*, 352 N.L.R.B. 815 (N.L.R.B. 2008)(petition to revoke granted because subpoena request was a “blunderbluss”.) Moreover, the request is unduly burdensome because it seeks the production of potentially thousands of documents.

FOR ALL OF THE REASONS SET FORTH ABOVE, Respondents hereby respectfully prays that the subpoenas *duces tecum* issued by Michael Bilik, Field Attorney be revoked.

Dated: Lake Success, New York
January 3, 2012

/s/ Michael J. Mauro
MILMAN LABUDA LAW GROUP PLLC
Attorneys for Respondent
3000 Marcus Avenue, Suite 3W8
Lake Success, New York 11042
(516) 328-8899

EXHIBIT A

FORM NLRB-31
(12-07)

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of the Records R&S Waste Services, LLC
500 Mamaroneck Avenue, Suite 320
Harrison, NY 10528

As requested by Elbert F. Tellem, Acting Regional Director, Region 2

whose address is 26 Federal Plaza, Room 3614 New York, NY 10278-0179
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Michael J. Bilik, Board Agent

or any other designated Board Agent of the National Labor Relations Board

at 26 Federal Plaza, Room 3614

in the City of New York, New York 10278-0179

on the 12th day of January 2012 at 9:30 (a.m.) (~~p.m.~~) or any adjourned

or rescheduled date to testify in R&S/Rogan Brothers Case Nos. 02-CA-065928 et al.

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

(See attachment for description of documents)

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B - 625211

Issued at New York, New York

this 29th day of December 2011



Lesfer A. Neltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

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 mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

APPENDIX A**DEFINITIONS AND INSTRUCTIONS**

A. The word “document” or “documents” means any existing printed, typewritten, handwritten, or otherwise recorded matter of whatever character, records stored on computer or electronically, including without limitation, letters, e-mails, licenses, memoranda, facsimile transmissions, telegrams, minutes, notes, contracts, transcripts, diaries, reports, calendars, payroll records, interoffice communications, statements, affidavits, photographs, microfilm, audio or video tapes, computer printouts, computer discs and all data contained thereon, and any such material in the possession of, control of, or available to the subpoenaed party, or any attorney, agent, representative or other persons acting in cooperation with, in concert with, or on behalf of said subpoenaed party.

B. The word “person” or “persons” means natural person, corporations, partnerships, sole proprietorships, associations or any other kind of entity.

C. Unless otherwise stated, each item in the subpoena covers the period from July 1, 2010 to date. The subpoena requests are continuing in nature and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.

D. R&S Waste Services, LLC is referred to herein as “R&S Waste Services”; Pinnacle Equity Group, LLC is referred to herein as “Pinnacle Equity”; Rogan Brothers Sanitation, Inc., is referred to herein as “Rogan Brothers”; Spiezio Organization, LLC, is referred to herein as “Spiezio Organization”; Industrial Recycling of New York City, Inc., is referred to herein as “Industrial Recycling”; ARJR Trucking, Inc., is referred to herein as “ARJR Trucking”; ARJR Holding, Inc., is referred to herein as “ARJR Holding”; Rogan RR LLC, is referred to herein as “Rogan RR”; Saw Mill Recovery Inc., is referred to herein as “Saw Mill Recovery”; and Sprain Mill Associates, Inc. is referred to herein as “Sprain Mill Associates.”

E. Whenever used herein, the singular shall be deemed to include the plural and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to refer to any and all of their owners, officers, representatives and agents; and the masculine shall be deemed to include the feminine and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and” and vice versa; and the words “each”, “every”, “any”, and “all” shall be deemed to include each of the other words.

F. All documents are requested in their original form, without abbreviation, redaction or expurgation; true copies may be provided if the original document is not available, but must be identified as copies.

G. As to any documents not produced in compliance with this subpoena on any ground or if any requested document was, through inadvertence or otherwise, destroyed, state or describe:

1. the author;
2. the recipient;
3. the name of each person;
4. the date of the document;
5. the subject matter of the document; and
6. the circumstances under which the document was destroyed or withheld.

H. All documents produced pursuant to this subpoena are to be organized and referenced by the numbered subpoenaed paragraph(s) to which each document or set of documents is responsive.

DOCUMENTS SUBJECT TO SUBPOENA**Items to be Produced**

1. Documents, including but not limited to payroll records, which show a complete listing of names, addresses of all employees and supervisors employed by R&S Waste Services from its inception, and employed by Rogan Brothers Sanitation and Industrial Recycling, since January 1, 2011, showing wages and benefits paid, dates of hire and termination, job titles and classifications, and job location including the yard out of which each employee operated.
2. Documents, including but not limited to all schedules, routes, and dispatcher records for all drivers and helpers, which will show assignments for all drivers and helpers and the location from which they operated.
3. Documents that will show the names, addresses and phone numbers of all customers or clients of R&S Waste Services, Rogan Brothers, and Industrial Recycling.
4. Documents, including but not limited to bank records that will show all financial transactions between Joseph Spiezio, James Rogan, Michael Vetrano, and Peter Ligouri, and their agents and spouses, during the relevant time period.
5. Documents, including but not limited to bank records that will show all financial transactions between R&S Waste Services, Rogan Brothers, Pinnacle Equity, Spiezio Organization, Industrial Recycling, ARJR Trucking, ARJR Holding, Rogan RR, Saw Mill Recovery and Sprain Mill Associates, during the relevant time period.
6. Documents, including but not limited to bank records that will show all financial transactions between Joseph Spiezio, James Rogan, Michael Vetrano, Peter Ligouri, their agents and spouses, and R&S Waste Services, Rogan Brothers, Pinnacle Equity, Spiezio Organization, Industrial Recycling, ARJR Trucking, ARJR Holding, Rogan RR, Saw Mill Recovery and Sprain Mill Associates, during the relevant time period.
7. Documents, including but not limited to general ledgers, tax returns, auditor's reports, and other financial statements or documents from FY 2010 to the date of the testimony provided herein for R&S Waste Services, Rogan Brothers Sanitation, and Industrial Recycling.
8. Documents, including all types of correspondence, between James Rogan, Joseph Spiezio, and Michael Vetrano in which they discuss the financial condition of Rogan Brothers or any of Rogan's related entities, including ARJR Trucking,

ARJR Holding, Rogan RR, Saw Mill Recovery, and Sprain Mill Associates, during the relevant time period.

9. Documents that will show the valuation of all assets used as collateral in the January 3, 2011 Security Agreement between Rogan Brothers and Pinnacle Equity, referenced in that agreement as Appendix A and in the May 25, 2011 UCC Lien, filing number 201105258174216.
10. Documents, including but not limited to cancelled checks and deposit records, that refer to or mention the loan of \$800,000 from Pinnacle Equity to Rogan Brothers; including but not limited to documents that reflect evidence or refer to the transfer of funds that will show whether and how the funds lent to Rogan Brothers from Pinnacle Equity were actually spent; and that will show whether Rogan Brothers repaid any part of the loan pursuant to the January 3, 2011 Security Agreement between Rogan Brothers and Pinnacle Equity.
11. Certificates of Incorporation, including all amendments thereto, for Rogan Brothers, Industrial Recycling, Spiezio Organization, ARJR Trucking, ARJR Holding, Rogan RR, Saw Mill Recovery, and Sprain Mill Associates including all Annual Reports, and minutes of all Board of Directors meetings, and documents which reflect evidence or identify the Directors and Officers of these corporations, during the relevant time period.
12. All documents that were signed, initialed, or approved by Peter Ligouri; all documents that will show Peter Ligouri's job title and job description; and all documents that will show his assignments, routes, or schedules as an employee of R&S Waste Services, Rogan Brothers Sanitation, and owner of Industrial Recycling, from January 1, 2011 to date.

Board Exhibit 5

MILMAN LABUDA LAW GROUP PLLC
3000 Marcus Avenue
Suite 3W8
Lake Success, New York 11042

Telephone (516) 328-8899
Facsimile (516) 328-0082

Via First Class Mail

February 4, 2013

Hon. Raymond Green
National Labor Relations Board
120 West 45th Street, 11th Floor
New York, New York 10036-5503

Re: R & S Waste Services LLC
2-CA-065928, et al

Dear Judge Green:

This firm represents Respondent R & S Waste Services LLC ("R &S") in the above referenced matter.

This letter serves as R & S Waste Services LLC's notice that it is preserving all appellate review rights based upon *Noel Canning v. NLRB*, 2013 U.S. App. LEXIS 1659 (D.C. Cir. Jan. 25, 2013) that the NLRB is not operating with a valid quorum. Any adverse decision against R & S by the NLRB will be subject to appeal based upon *inter alia Noel Canning's* holding. Additionally, the NLRB's lack of a valid quorum renders the NLRB's March 12, 2012 denial of R & S's petition to revoke and its August 7, 2012 denial of R & S's motion to dismiss null and void. R & S will be retaining additional counsel for its right to seek judicial intervention with respect to the issuance of those orders based upon *Noel Canning's* holding that the NLRB is not operating with a valid quorum.

Very truly,

MILMAN LABUDA LAW GROUP PLLC

/s/ _____
Michael J. Mauro

Cc: Allen Rose, Esq.
Jane Lauer Barker, Esq.
Gary Rothman, Esq.

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