BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of: TANGRAM FLOORING, INC., Employer, and, SOUTHWEST REGIONAL COUNCIL OF CARPENTERS, Charging Party Union and PAINTERS AND ALLIED TRADES DISTRICT COUNCIL 36, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES AFL-CIO, CLC, Party in Interest.	CASE NO. 21-CD-675 **BRIEF OF EMPLOYER TANGRAM FLOORING, INC.**

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Tangram Flooring, Inc. hereby submits its post-hearing brief in this matter.

I.

INTRODUCTION

Tangram Flooring, Inc., the employer in this matter, adopts the arguments filed by the Charged Party, the Southwest Regional Council of Carpenters ("Carpenters Union"). The Carpenters have admitted to and presented evidence that they threatened to strike against Tangram at multiple job sites if Tangram gave the flooring work at issue to the Painters Union. The evidence gathered at the hearing demonstrates that the Painters are claiming jurisdiction over the work being

done by Tangram's employees who are working under a contract with the Carpenters. These facts alone meet the requirements for the Board to act.

II.

TANGRAM IS CAUGHT IN THE MIDDLE OF A DISPUTE BETWEEN TWO UNIONS

Tangram is a new and small flooring installation company which elected to sign a contract with the Carpenters even before it began business operations in late 2008. Tangram has only approximately 25 employees. The reasons why Tangram chose to sign with the Carpenters were explained in detail by Tangram's Vice President Dave Teper: the Carpenters are a bigger, stronger union which offers better opportunities to Tangram's workers. The Carpenters have a bigger and stronger pension fund. The Carpenters offer more and better training for workers which gives them improved opportunities to work in various jobs. The Carpenters have a more efficient job dispatching system and have a larger pool of members from which they can draw. In addition, Mr. Teper was previously a member of the Carpenters Union in Michigan and had operated a previous floor covering company under a Carpenters contract. All these objective and subjective reasons support employer's preference for the Carpenters, rather than the Painters.

From the Tangram's first job, which it began in late 2008, the Painters have consistently harassed Tangram to create pressure for Tangram to breach its agreement with the Carpenters and sign up with the Painters. Tangram has worked on only three job sites installing flooring since it began operating--The W Hotel/Legacy Apartments project, the Pacific Life project and the Miller Childrens Hospital project. The Painters have shown up on *every one* of Tangram's job sites—interrogating Tangram workers about what union they belong to, erecting signs and inflated rats falsely implying that Tangram is a non-union employer and

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making claims to contractors that Tangram must hire Painter Union members[1]. This series of threats and interferences has seriously impaired Tangram's ability to get more work for its employees because the owners and contractors do not want union trouble on their job sites.

Thus, Tangram is trapped in the middle of this jurisdictional dispute. The union with which it signed an agreement is threatening to strike Tangram, and the Painters Union is threatening to interfere with their jobs on a continuing basis unless Tangram hires Painters. So Tangram is left in an intolerable position: either hire through the Painters union and get a strike from the Carpenters, or get thrown off jobs by the contractors because the Painters will disrupt the workplace and instigate legal actions against the contractors.

III.

THE BOARD MUST ISSUE AN AREA-WIDE ORDER TO EFFECTIVELY RESOLVE THIS DISPUTE

The Board has an obligation to resolve this matter and to do so promptly. Tangram desires to meet its contractual obligations to the Carpenters Union and work at job sites without Painter harassment and interference. Tangram therefore requests that the Board issue an order that the flooring work being performed by Tangram workers is under the sole jurisdiction of the Carpenters Union.

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[1] These harassing tactics have ranged from the blunt and hostile verbal threats by a Painters Union representative ("Fuck you, you rat") to slightly more subtle approaches, like insisting that only apprentices from the Painters apprenticeship program can be on Tangram's public works jobs. Of course, as the Painters witness admitted, all those Painter apprentices are Painters union members, and they must be working with Painters union member journeymen. Using this two-step approach (which must be the Painters idea of subtlety), the Painters would gain *de facto* recognition for all Tangram's workers on any job where even one Painters apprentice showed up. This "nose in the tent" approach is clearly an indirect claim for all the flooring work being done by Tangram under their contract with the Carpenters.

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Because the facts show that the Painters have extended their harassment campaign beyond the W Hotel/Legacy Apartments project, the order should apply to the entire dispute and therefore find that the work is within the Carpenter jurisdiction within the entire area covered by Tangram's contracts with that Union. The Carpenters have already stated in writing that they will strike another project—the Miller Children's Hospital—if Tangram caves in to the Painters and hires Painter union members (such as Painter apprentices) for this ongoing project. This is a real, not a hypothetical, dispute. Sufficient evidence was put into the hearing record to allow the Board to conclude that the Painters are engaged a programmatic attack on the Carpenters jurisdiction over floor covering installation that goes beyond just the W Hotel/Legacy Apartment project. Tangram should not be allowed to be repeatedly victimized because the Board issues a narrow order which will clearly not bring the Painter's concerted attack on the Carpenters to a definitive conclusion.

To issue a limited order when the evidence shows a concerted and determined effort by the Painters to claim work on multiple projects would be simply unjust and ineffective. The Painters should be precluded from using their economic clout to blackmail a small employer like Tangram by forcing the employer to bring successive charges to the Board or file costly lawsuits in order to preserve its right to work with the union of its choice.

Dated: July 2, 2009

SNELL & WILMER L.L.P.

By: _____

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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, CA 92626-7689.

On July 2, 2009, I served, in the manner indicated below, the foregoing document described as **Brief of Employer Tangram Flooring, Inc.** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

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☐ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Costa Mesa, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service each day and that practice was followed in the ordinary course of business for the service herein attested to (C.C.P. § 1013(a)).

☐ BY FACSIMILE: (C.C.P. § 1013(e)(f)).

☐ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)).

☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

☒ BY ELECTRONIC MAIL: I caused such document to be electronically mailed to the e-mail addresses listed above per Section 102.114(i) of NLRB Rules and Regulations

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 2, 2009, at Costa Mesa, California.

Rudi L. Wilson

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