



United States Government

NATIONAL LABOR RELATIONS BOARD

Region Four

**615 Chestnut Street - Seventh Floor
Philadelphia, PA 19106-4404**

Telephone: (215) 597-7601
Fax: (215) 597-7658

September 17, 2010

ALSO FILED BY ELECTRONIC MAIL

Lester A. Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Re: Hanson Aggregates BMC, Inc.
Cases 4-CA-33330 et al

Dear Mr. Heltzer:

Attached please find an original and seven copies of Counsel for the Acting General Counsel's Response to Motion For Modification of Board Order in the above-captioned matter. A copy of this Motion with attachment has been served on this day to the parties below by electronic mail.

Very truly yours,

ELANA R. HOLLO
Counsel for Region Four of the
National Labor Relations Board

cc:

Jonathan R. Nadler, Esquire, Reed Smith Shaw & McClay, LLP, 2500 Liberty Place, 1650 Market Street, Philadelphia, PA 19103-7301, jnadler@reedsmith.com Counsel for Respondent

Louis Agre, Esquire, Operating Engineers Local 542, 1375 Virginia Drive, Suite 100, Fort Washington, PA 19034 agrelou@gmail.com Counsel for the Union

ERH/tsl

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

HANSON AGGREGATES BMC, INC.	:	
	:	Cases 4-CA-33330
	:	4-CA-33508
	:	4-CA-33547
and	:	4-CA-34290
	:	4-CA-34362
	:	4-CA-34363 and
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 542, AFL-CIO	:	4-CA-34378
	:	
	:	

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
RESPONSE TO MOTION FOR MODIFICATION OF BOARD ORDER**

Counsel for the Acting General Counsel hereby responds to the Motion for Modification of Board Order (Motion) submitted by International Union of Engineers, Local 542, AFL-CIO (Union) on July 19, 2010.¹

Counsel for the Acting General Counsel submits that the Union's Motion should be denied. The Union contends that under *New Process Steel LP v. NLRB*, 130 Sct 2635 (2010), the Board's Decision referred to above was "invalidated." Motion, at P.4 Nevertheless, the Union seeks modification of only one portion of the Board's Order insofar as the Order does not provide for an affirmative bargaining obligation. What the Motion fails to mention is that on November 17, 2009, when there were only two Board Members, the United States Court of

¹ The Board's Decision and Order in this matter was issued by the two Member Board on September 30, 2008 and is reported as *Hanson Aggregates*, 353 NLRB No. 28.

Appeals for the Third Circuit entered a Consent Judgment enforcing the Board's Order (Case No. 09-2817).² But, instead of attempting to void the two member Board Order at that time, the Union consented to a Judgment enforcing that Order. Consistent with the Board's recent decision in *The Lorge School*, 355 NLRB No. 94 (August 19, 2010), and the cases cited therein at n.1, the entry of the Court Judgment and Mandate finally resolved matters as "*res judicata*." Therefore, it is respectfully submitted that the Board deny the Motion.

September 17, 2010
Dated

15/Elana R. Hollo
ELANA R. HOLLO
Counsel for the Acting General Counsel
National Labor Relations Board
Region Four
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

² As noted in a letter sent by the Clerk of the Third Circuit on November 17, 2009, the Court issued a certified judgment in lieu of a formal mandate, which is to be treated in all respects as a mandate. (See Exhibit 1 to Response).

OFFICE OF THE CLERK

MARCIA M. WALDRON
CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

November 17, 2009

Dorothy L. Moore- Duncan
NLRB Region 4
615 Chestnut Street - 7th Floor
Philadelphia, PA 19106-4404

RE: NLRB v. Hanson Aggregates BMC Inc
Case Number: 09-2817
District Case Number: 4-CA-33330
District Case Number: 4-CA-33508
District Case Number: 4-CA-33547
District Case Number: 4-CA-34290
District Case Number: 4-CA-34362
District Case Number: 4-CA-34363
District Case Number: A-CA-34378

Dear, Sir or Madam;

Enclosed herewith is the certified judgment in the above-captioned case(s). The certified judgment or order is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Kindly acknowledge receipt for same on the enclosed copy of this letter.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

Karl A. FrittonEsq.
Fred B. JacobEsq.
Dorothy L. Moore-DuncanEsq.
Jonathan R. NadlerEsq.
Kira D. VolEsq.

Very truly yours,

Marcia M. Waldron