**BSC Development Buf, LLC *and* Connex Construction, LLC *and* LIUNA, Laborers Local 210.** Cases 3–CA–26442, 3–CA–26460, 3–CA–26499, and 3–CA–26562

December 17, 2008

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

DECISION AND ORDER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon charges and amended charges filed by LIUNA, Laborers Local 210 (the Union), the General Counsel issued the consolidated complaint on April 30, 2008, against BSC Development Buf, LLC (Respondent BSC) and Connex Construction, LLC (Respondent Connex), (collectively, the "Respondents"), alleging that they have violated Section 8(a)(5), (3), and (1) of the Act.

Subsequently, the Respondents and the Union entered into a settlement agreement, which was approved by the Acting Regional Director for Region 3 on June 3, 2008. Pursuant to the terms of the settlement agreement, the Respondents agreed to the following, among other things: (1) the payment of $78,384.44 in backpay; (2) an installment payment agreement, which is incorporated by reference in the settlement agreement and made a part thereof; (3) the execution of a promissory note by the Respondents and Bashar Al Issa, an individual, incorporated by reference in the settlement agreement and made a part thereof, guaranteeing payment of the backpay amounts set forth in the installment agreement; (4) immediate notice by the Respondents to the Board's Regional Director, in the event that the Respondents planned to sell any of their assets, and the Respondents' agreement to refrain from completing any such sale less than 2 weeks from the date of such notice; and (5) posting of a notice to employees. The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party and/or Bashar Al Issa, an Individual, including but not limited to failing to make timely installment payments of moneys as set forth above, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, and/or Bashar Al Issa, an Individual, the Regional Director may re-issue complaint previously issued in the instant cases on April 30, 2008, based upon the allegations of the charge(s) and amended charge(s) in the instant case(s) which were found to have merit. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the just re-issued complaint concerning the violations of the Act alleged therein. The Charged Party understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it *waives the right to file an answer to the aforementioned complaint or amended complaint or otherwise contest the validity of any such allegations*, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for default judgment the Board shall issue an Order requiring the Charged Party to show cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Charged Party defaulted upon the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is customary to remedy such violations, including, but not limited to the remedial provisions of this Settlement Agreement. The parties further agree that the Board's Order may be entered thereon ex parte and that, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's order, judgment may be entered thereon ex parte and without opposition from the Charged Party. (Emphasis added.)

By letter dated September 23, 2008, the compliance officer for Region 3 advised the Respondents that they were in default of the settlement agreement because they had failed to remit the payment due on September 19, 2008. The letter further advised the Respondents that if they did not cure their breach within 14 days, the entire remaining backpay amount of $15,874.34 would become immediately due, and that the Region would take all necessary action to collect the debt. The Respondents did not comply. Accordingly, on October 7, 2008, the Acting Regional Director reissued the consolidated complaint.

On October 9, 2008, the Respondents, by their chief executive officer, Bashar Al Issa, submitted an answer to the reissued consolidated complaint asserting that "[d]ue to the financial position of the company, [the Respondents were] not at this time able to pay the remainder of

the settlement," but that the Respondents intended to pay the amounts due after the sale of certain property.[1]

On October 17, 2008, the Region notified the Respondents that an inability to pay is not a legitimate defense for failing to comply with the terms of the settlement agreement and that the Region intended to file a Motion for Summary Judgment.

On October 23, 2008, the General Counsel filed a Motion for Summary Judgment with the Board. Thereafter, on October 29, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment[2]

According to the uncontroverted allegations in the Motion for Summary Judgment, the Respondents have failed to comply with the terms of the settlement agreement by failing to pay the installment payment of $7,912.10 due on September 19, 2008, or to remit the entire remaining backpay amount of $15,874.34, which became due immediately after the Respondents failed to pay the September 19, 2008 installment. In addition, the terms of the settlement clearly state that the Respondents waived the right to file an answer. Consequently, we find, pursuant to the provisions of the settlement agreement set forth above, that all the allegations of the reissued consolidated complaint are true.[3]

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times, Respondent BSC, a corporation with an office and place of business located at 107 Delaware Avenue, Buffalo, New York, has been engaged in the business of performing construction, renovation and redevelopment services.

At all material times, Respondent Connex, a corporation with an office and place of business located at 107 Delaware Avenue, Buffalo, New York, has been engaged in the business of performing general construction services.

At all material times, Respondent BSC and Respondent Connex have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise.

Based on their operations described above, Respondent BSC and Respondent Connex constitute a single-integrated business enterprise, and are a single employer within the meaning of the Act.

During the 12-month period preceding the issuance of the reissued consolidated complaint, the Respondents, in conducting their business operations described above, collectively purchased and received at their Buffalo, New York facility goods valued in excess of $50,000, directly from points located outside the State of New York.

We find that the Respondents have been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that LIUNA, Laborers Local 210, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names, and have been supervisors of the Respondents within the meaning of Section 2(11) of the Act and agents of the Respondents within the meaning of Section 2(13) of the Act:

- Bashar Issa CEO
- David Rycyna Operations Coordinator, from about May 2007 until about November 1, 2007.
- Kyle R. Raczka Operations Manager/Package Manager, from about June 2007, until about November 1, 2007; Operations Coordinator, from about November 1, 2007 until the present.
- Keith L. Szczygiel Labor Manager, from about August 20, 2007, until about mid-November 2007; Project Manager, from about mid-November 2007 until the present.
- Patrick Ogiony Operations Manager/Package Manager, from about May 2007, until about Fall, 2007.

[1] On September 18, 2008, the Region discovered that Respondent BSC was in the process of selling some property without first notifying the Region as required by the settlement agreement.

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[3] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

- Robert C. Carbone Operations Manager, from about August 6, 2007, until about January, 2008.
- Brian W. Conrad Operations Manager, from about May 2007, until the present.
- Eric Mayer Labor Manager, from about May 2007, until about September 6, 2007.
- Matt Doherty Labor Manager, since about October 29, 2007, until the present.
- Mark Chmarney Assistant Labor Manager, from about May 2007, until about September 3, 2007.
- Dr. Susan Fennick Human Resource Manager, at all material times, to about September 2007.
- Melissa Smith Human Resource Manager, from about September 2007, until the present.

At all material times, from about July 31, 2007, until November 1, 2007, James Wolford held the position of the Respondents' Health and Safety Coordinator, and has been an agent of the Respondents' within the meaning of Section 2(13) of the Act.

1. The Respondents, by the individuals named below, at the Respondents' Buffalo, New York facility, about dates opposite their names, interrogated employees about their union activities.

(a) David Rycyna about August 27, 2007

(b) Kyle Raczka about September 2007

(c) David Rycyna about mid-September 2007

(d) Keith Szczygiel about October 2007

2. About August or September 2007, the Respondents, by Bashar Issa, during the course of a meeting held with employees at the Respondents' Buffalo, New York facility, promised employees health insurance benefits in order to discourage employees from supporting the Union.

3. About August or September 2007, the Respondents, by James Wolford, at the Respondents' Buffalo, New York facility, created the impression among their employees that their union activities were under surveillance by the Respondents.

4. About the end of January 2008, the Respondents, by Matt Doherty, at the Respondents' Buffalo, New York facility, informed employees that it was futile for them to have selected the Union as their collective-bargaining representative.

5. On several dates in mid-September 2007, the Respondents, by David Rycyna, at the Respondents' Buffalo, New York facility:

(a) Proposed that employees form an in-house union and offered assistance to employees in the formation of an in-house union;

(b) Impliedly threatened an employee with unspecified reprisals if the employees selected the Union as their collective-bargaining representative;

(c) told employees that they should form an in-house union, to avoid losing their jobs to the Union.

6. About October 5, 2007, the Respondents in a letter to their employees:

(a) Promised that the Respondents would institute a health insurance plan for employees;

(b) Threatened employees with loss of work if they selected the Union as their collective-bargaining representative;

7. About October 10, 2007, the Respondents, by Patrick Ogiony, at the Respondents' Buffalo, New York facility:

(a) Interrogated an employee concerning his protected concerted activities and union activities;

(b) Impliedly threatened employees with unspecified reprisals if they engaged in protected concerted activities.

8. About October 11, 2007, the Respondents, by David Rycyna, in a meeting with employees at the Respondents' Buffalo, New York facility:

(a) Promised benefits to employees to discourage employees' support for the Union;

(b) Threatened employees with loss of employment if the employees voted in the Union;

(c) Threatened employees with loss of opportunities for advancement or training in other trades and that they would remain laborers if the employees voted for the Union.

9. The Respondents, by Keith Szczygiel, at the Respondents' Buffalo, New York facility:

(a) About October 19, 2007, told employees that there was a lack of work and that employees were being laid off because employees supported the Union.

(b) About October 25, 2007, implied to employees that selecting a union would be futile.

(c) About the week of November 18, 2007, threatened an employee with loss of a pay raise if the employee discussed the pay raise with other employees.

10. From about August through about September 2007, Demetrius Calhoun, an employee of the Respondents, engaged in concerted activities with other employees of the Respondents for the purpose of mutual aid and protection, by questioning the Respondents, during an employee meeting conducted by the Respondents and on other occasions, about employees' terms and conditions of employment.

About September 18, 2007, the Respondents terminated employee Demetrius Calhoun. The Respondents engaged in the conduct described above because Calhoun engaged in the conduct described above, he formed, joined or assisted the Union or engaged in concerted activities, and to discourage employees from engaging in these and other protected concerted activities.

11. About the weeks of September 26, October 1, and October 8, 2007, the Respondents, by Keith Szczygiel and David Rycyna, imposed more onerous working conditions on employees Kevin Mejia and Jeffrey Hill.

12. About October 2, 2007, the Respondents, by Keith Szczygiel, temporarily laid off employees Kevin Mejia and Jeffrey Hill.

13. About October 25, 2007, the Respondents, by Keith Szczygiel and David Rycyna, disciplined employee Jeffrey Hill.

14. About October 26, 2007, the Respondents laid off employees Kevin Mejia and Jeffrey Hill.

15. Since about October 26, 2007, and about December 15, 2007, the Respondents failed to recall from layoff employees Kevin Mejia and Jeffrey Hill.

The Respondents engaged in the conduct described in paragraphs 11–15 because Mejia and Hill formed, joined or assisted the Union or engaged in concerted activities, and to discourage employees from engaging in these activities.

The following employees of the Respondents (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time general laborers, including construction foremen, employed by the Employer at their facility located at 107 Delaware Avenue, Buffalo, New York; excluding all master electricians, master plumbers, drywallers, painters, tile setters, plasterers, carpenters, electricians, plumbers and welders, office clerical employees, guards and all professional employees and supervisors as defined in the Act.

About October 12, 2007, a majority of employees in the unit designated and selected the Union as their representative for the purpose of collective bargaining with the Respondents. About November 8, 2007, the Union was certified as the exclusive collective-bargaining representative of the unit. Since about October 12, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

16. From about October 12, 2007, until about January 2008, the Respondents unilaterally subcontracted bargaining unit work.

17. About the week of October 22, 2007, the Respondents unilaterally laid off certain of the employees in the unit.

18. About November 10, 2007, the Respondents unilaterally granted a wage increase to certain of the employees in the unit.

19. About December 15, 2007, the Respondents unilaterally recalled to work employees in the unit.

The subjects set forth above in paragraphs 16–19 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining. The Respondents engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondents with respect to this conduct and the effects of this conduct.

20. On various dates from about December 19, 2007 through April 2008, the Respondents and the Union met for the purpose of collective bargaining with respect to wages, hours, and other terms and conditions of employment of employees in the unit. During this period, the Respondents designated as their bargaining representative an individual without authority to negotiate or enter into binding agreements.

By their overall conduct, including the conduct described above in paragraph 20, the Respondents have failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

## CONCLUSIONS OF LAW

1. By the acts and conduct described in paragraphs 1–9, the Respondents have interfered with, restrained, and

coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By the conduct described in paragraphs 10–15, the Respondents have discriminated in regard to the hire or tenure or terms or conditions of employment of their employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. By the conduct described in paragraphs 16–20, the Respondents have failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees, in violation of Section 8(a)(5) and (1) of the Act.

4. The Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents have violated Section 8(a)(3) by terminating Demetrius Calhoun, and by laying off and failing to recall from layoff Kevin Mejia and Jeffrey Hill, and having further found that the Respondents have violated Section 8(a)(5) by unilaterally laying off certain unit employees about the week of October 22, 2007, we shall order the Respondents to make these employees whole for any loss of earnings and other benefits suffered as a result of the Respondents' unlawful actions against them.

In this regard, the Respondents agreed in the settlement agreement that the Respondents would pay a total of $78,384.44 in backpay. The General Counsel's motion states that there is an outstanding balance in the amount of $15,874.34. Accordingly, we shall order the Respondents to immediately remit this amount to the Region for payment to the proper parties.[4]

We find, however, that the backpay due the employees should not be limited to this amount. As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could "issue an Order providing a full remedy for the violations found as is customary to remedy such violations, including, but not limited to the remedial provisions of this Settlement Agreement." Thus, under this language, it is appropriate to provide the "customary" remedies of reinstatement, full backpay, expungement of the Respondents' personnel records and notice posting.[5]

The additional backpay due the employees shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). However, because we shall order the Respondents to pay the damages remaining under the settlement agreement, the applicable backpay period will commence on June 3, 2008, the day the Acting Regional Director approved the settlement agreement. We find it necessary to impose this limitation to prevent an unintended double recovery for the period running from the date that the employees were discharged or laid off to the effective date of the settlement agreement.

We shall also order the Respondents, to the extent that it has not already done so, to offer these employees full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

Further, Respondents shall also be required to remove from their files all references to the unlawful termination of Demetrius Calhoun, the unlawful layoffs and failure to recall from layoff of Kevin Mejia and Jeffrey Hill, and the unlawful discipline of Jeffery Hill, and notify them in writing that this has been done and that the unlawful references will not be used against them in any way.

Further, having found that Respondents violated Section 8(a)(5) by failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees, including by designating as their bargaining representative an individual without authority to negotiate or enter into binding agreements, we shall order the Respondents, on request, to meet and bargain collectively and in good faith with the Union with respect to wages, hours and other terms and conditions of employment, through a designated bargaining representative with the authority to negotiate and enter into a binding agreement, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondents begin to bargain in good faith with the Union. *Mar-Jac Poultry*

[4] In the reissued consolidated complaint, the General Counsel seeks compound interest computed on a quarterly basis for any backpay awarded. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham,* 352 NLRB No. 69, slip op. at fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

[5] See *L.J. Logistics, Inc.*, 339 NLRB 729, 730 (2003).

Co., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

In addition, having found that the Respondents unlawfully granted a wage increase to certain unit employees without notifying the Union or affording it an opportunity to bargain, we shall order the Respondents, if requested by the Union, to rescind the unilateral wage increase.

Further, having found that the Respondents unlawfully subcontracted bargaining unit work, laid off certain unit employees about the week of October 22, 2007, and recalled unit employees to work without notifying the Union or affording it an opportunity to bargain, we shall order the Respondents, on request, to bargain with the Union concerning these actions and their effects.

Finally, we shall order the Respondents to preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

## ORDER

The National Labor Relations Board orders that the Respondents BSC Development Buf, LLC and Connex Construction, LLC, Buffalo, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with LIUNA, Laborers Local 210, as the exclusive collective-bargaining representative of the employees in the following unit:

> All full-time and regular part-time general laborers, including construction foremen, employed by the Employer at their facility located at 107 Delaware Avenue, Buffalo, New York; excluding all master electricians, master plumbers, drywallers, painters, tile setters, plasterers, carpenters, electricians, plumbers and welders, office clerical employees, guards and all professional employees and supervisors as defined in the Act.

(b) Promising employees health insurance or other benefits in order to discourage employees from supporting the Union.

(c) Creating the impression among employees that their union activities were under surveillance by the Respondents.

(d) Informing employees or otherwise implying that it is futile to select the Union as their exclusive collective-bargaining representative.

(e) Proposing that employees form an in-house union, offering assistance to employees in the formation of an in-house union, and telling employees that they should form an in-house union to avoid losing their jobs to the Union.

(f) Threatening or impliedly threatening employees with loss of work, loss of employment, loss of opportunities for advancement or training, or other unspecified reprisals if the employees selected the Union as their exclusive collective-bargaining representative or participate in other protected concerted activities.

(g) Interrogating employees concerning their protected concerted activities and union activities.

(h) Telling employees that there was a lack of work and that employees were being laid off because employees supported the Union.

(i) Threatening employees with loss of a pay raise if the employees discussed the pay raise with other employees.

(j) Terminating employees because they formed, joined or assisted the Union or engaged in any protected concerted activities, or to discourage employees from engaging in these and other protected concerted activities.

(k) Imposing more onerous working conditions on employees because they formed, joined or assisted the Union or engaged in any protected concerted activities, or to discourage employees from engaging in these and other protected concerted activities.

(l) Laying off employees because they formed, joined, or assisted the Union or engaged in any protected concerted activities, or to discourage employees from engaging in these and other protected concerted activities.

(m) Disciplining employees because they formed, joined, or assisted the Union or engaged in any protected concerted activities, or to discourage employees from engaging in these and other protected concerted activities.

(n) Failing to recall from layoff their employees because they formed, joined, or assisted the Union or engaged in any protected concerted activities, or to discourage employees from engaging in these and other protected concerted activities.

(o) Unilaterally subcontracting bargaining unit work, laying off certain unit employees, granting a wage increase to certain unit employees, and recalling unit employees to work without prior notice to the Union and

without affording the Union an opportunity to bargain with respect to, and the effects of, this conduct.

(p) Designating as their bargaining representative individuals without authority to negotiate or enter into binding agreements.

(q) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to wages, hours and other terms and conditions of employment, through a designated bargaining representative with authority to negotiate or enter into binding agreements, and, if an understanding is reached, embody the understanding in a signed agreement.

(b) If requested by the Union, rescind the wage increase unlawfully granted to certain unit employees without notifying the Union or affording it an opportunity to bargain; provided, however, that nothing in this Order shall be construed as requiring the Respondent to rescind the wage increase unless the Union requests such action.

(c) On request, bargain with the Union concerning the Respondents' decisions with respect to subcontracting of bargaining unit work, layoffs of certain unit employees, recalling unit employees to work, and the effects of these decisions.

(d) Remit to Region 3 the payment of $15,874.34 to be disbursed to employees Demetrius Calhoun, Kevin Mejia, Jeffrey Hill, and certain unit employees laid off about the week of October 22, 2007, in accordance with the June 3, 2008 settlement agreement, and make those employees whole for any loss of earnings and other benefits suffered since June 3, 2008, as a result of the Respondents' unlawful actions against them, with interest, as set forth in the remedy section of this decision.

(e) Within 14 days from the date of this Order, if it has not already done so, offer Demetrius Calhoun, Kevin Mejia, Jeffrey Hill, and the unit employees laid off about October 22, 2007, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(f) Within 14 days from the date of this Order, remove from their records any reference to the unlawful discharge of Demetrius Calhoun, the unlawful layoffs and failure to recall from layoffs of Jeffrey Hill and Kevin Mejia, and the unlawful discipline of Jeffrey Hill, and within 3 days thereafter, notify each of them in writing that this has been done and that the unlawful termination, layoffs, failure to recall from layoffs and discipline will not be used against them in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at their facility in Buffalo, New York, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since about August 2007.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with LIUNA, Laborers Local 210, as the exclusive collective-bargaining representative of the employees in the unit. The appropriate unit is:

> All full-time and regular part-time general laborers, including construction foremen, employed by us at our facility located at 107 Delaware Avenue, Buffalo, New York; excluding all master electricians, master plumbers, drywallers, painters, tile setters, plasterers, carpenters, electricians, plumbers and welders, office clerical employees, guards and all professional employees and supervisors as defined in the Act.

WE WILL NOT promise you health insurance or other benefits in order to discourage you from supporting the Union.

WE WILL NOT create the impression that your union activities are under surveillance.

WE WILL NOT inform you or otherwise imply that it is futile to select the Union as your exclusive collective-bargaining representative.

WE WILL NOT propose that you form an in-house union, offer assistance to you in the formation of an in-house union, or tell you that you should form an in-house union to avoid losing your jobs to the Union.

WE WILL NOT threaten or impliedly threaten you with loss of work, loss of employment, loss of opportunities for advancement or training, or other unspecified reprisals if you select the Union as your exclusive collective-bargaining representative or participate in other protected concerted activities.

WE WILL NOT interrogate you concerning your protected concerted activities and union activities.

WE WILL NOT tell you that there is a lack of work and that employees were being laid off because they supported the Union.

WE WILL NOT threaten you with loss of a pay raise if you discuss the pay raise with other employees.

WE WILL NOT terminate you because you form, join or assist the Union or engage in any protected concerted activities, or to discourage you from engaging in these and other protected concerted activities.

WE WILL NOT impose more onerous working conditions on you because you form, join or assist the Union or engage in any protected concerted activities, or to discourage you from engaging in these and other protected concerted activities.

WE WILL NOT lay off employees because you form, join, or assist the Union or engage in any protected concerted activities, or to discourage you from engaging in these and other protected concerted activities.

WE WILL NOT discipline you because you form, join, or assist the Union or engage in any protected concerted activities, or to discourage you from engaging in these and other protected concerted activities.

WE WILL NOT fail to recall you from layoff because you formed, joined, or assisted the Union or engaged in any protected concerted activities, or to discourage you from engaging in these and other protected concerted activities.

WE WILL NOT unilaterally subcontract bargaining unit work, layoff unit employees, grant a wage increase to unit employees, or recall unit employees to work without prior notice to the Union and without affording the Union an opportunity to bargain with respect to, and the effects of, this conduct.

WE WILL NOT designate as our bargaining representative an individual with no authority to negotiate or enter into binding agreements.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit with respect to wages, hours, and other terms and conditions of employment, through a designated bargaining representative with authority to negotiate or enter into binding agreements, and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, if requested by the Union, rescind the wage increase unlawfully granted to certain unit employees without notifying the Union or affording it an opportunity to bargain.

WE WILL, on request, bargain with the Union concerning the our decisions with respect to subcontracting of bargaining unit work, layoffs of certain unit employees, recalling unit employees to work, and the effects of these decisions.

WE WILL remit to Region 15 the payment of $15,874.34 to be disbursed to employees Demetrius Calhoun, Kevin Mejia, Jeffrey Hill, and certain unit employees laid off about the week of October 22, 2007, in accordance with the June 3, 2008 settlement agreement, and make those employees whole for any loss of earnings and other benefits suffered since June 3, 2008, as a result of our unlawful actions against them, with interest.

WE WILL, within 14 days from the date of this Order, offer Demetrius Calhoun, Kevin Mejia, Jeffrey Hill, and the employees laid off about October 22, 2007, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, remove from our records any reference to the unlawful discharge of Demetrius Calhoun, the unlawful layoffs and failure to recall from layoffs of Jeffrey Hill and Kevin Mejia, and the unlawful discipline of Jeffrey Hill, and within 3 days thereafter, notify each of them in writing that this has been done and that the unlawful termination, layoffs, failure to recall from layoffs and discipline will not be used against them in any way.

BSC DEVELOPMENT BUF, LLC AND CONNEX CONSTRUCTION, LLC