

1 ELLEN GREENSTONE (CSB No. 66022)
2 ROTHNER, SEGALL & GREENSTONE
3 510 South Marengo Avenue
4 Pasadena, California 91101-3115
5 Telephone: (626) 796-7555
6 Facsimile: (626) 577-0124

7
8 Attorneys for Southern California Painters and Allied
9 Trades District Council No. 36, International Union
10 of Painters and Allied Trades, AFL-CIO

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

RAYMOND INTERIOR SYSTEMS,

Case No. 21-CA-37649

and

SOUTHERN CALIFORNIA PAINTERS AND
ALLIED TRADES DISTRICT COUNCIL NO.
36, INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, AFL-CIO,

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, LOCAL
UNION, 1506,

and

SOUTHERN CALIFORNIA PAINTERS AND
ALLIED TRADES DISTRICT COUNCIL NO.
36, INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, AFL-CIO,

Case No. 21-CB-14259

and

SOUTHWEST REGIONAL COUNCIL OF
CARPENTERS, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA.

(Party in Interest)

**CHARGING PARTY SOUTHERN
CALIFORNIA PAINTERS AND
ALLIED TRADES DISTRICT
COUNCIL NO. 36, INTERNATIONAL
UNION OF PAINTERS AND ALLIED
TRADES, AFL-CIO'S RESPONSE TO
NOTICE OF SUPPLEMENTAL
AUTHORITY RE RESPONDENT
RAYMOND INTERIOR SYSTEMS,
INC.'S MOTION FOR
RECONSIDERATION**

1 On June 24, 2011, Respondent RAYMOND INTERIOR SYSTEMS (“Raymond”) filed a
2 Notice of Supplemental Authority in support of its pending Motion for Reconsideration in this
3 matter. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
4 LOCAL UNION 1506 (“Carpenters Union”) is also a respondent in this matter. Charging Party
5 SOUTHERN CALIFORNIA PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO.
6 36, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL-CIO (“Painters
7 Union”) files this Response to Raymond’s Notice of Supplemental Authority.

8 The Board, sitting as a two-member Board, issued its original Decision and Order in this
9 case on September 30, 2009. *Raymond Interior Systems*, 354 NLRB No. 85 (2009).
10 Respondents Raymond and the Carpenters Union filed petitions for review, as did Charging Party
11 Painters Union; the General Counsel filed a cross-application for enforcement. Thereafter, the
12 Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (2010),
13 and the case was remanded for further proceedings consistent with the Supreme Court’s decision.

14 The Board issued a Decision in Order on September 30, 2010. *Raymond Interior*
15 *Systems*, 355 NLRB No. 209 (2010). The Decision upholds the Decision of Administrative Law
16 Judge Burton Litvack that Raymond violated Sections 8(a)(2) and (3) of the Act by unlawfully
17 assisting the Carpenters Union in obtaining authorization cards from Raymond’s drywall finishing
18 employees and by granting recognition to the Carpenters Union at a time when the Carpenters
19 Union did not represent an uncoerced majority of those employees, and that the Carpenters Union
20 violated Section 8(b)(1)(A) by accepting recognition. The Board also upheld the ALJ’s
21 determination that Raymond violated Section 8(a)(3) by maintaining and applying the Carpenters
22 Union 2006-2010 master agreement, including its union security provision, to Raymond’s drywall
23 finishing employees at a time when the Carpenters Union did not represent an uncoerced majority
24 of those employees, and that the Carpenters Union committed a corresponding violation of
25 Section 8(b)(2). The Board upheld the ALJ’s order that Raymond disestablish its recognition of
26 the Carpenters Union and cease giving effect to the Carpenters Union agreement. In response the
27 Board’s Decision and Order, as with its original decision, Respondents Raymond and Carpenters
28 filed petitions for review, as did Charging Party Painters Union; the General Counsel filed a cross-

1 application for enforcement.

2 On or about October 27, 2010, Raymond, joined by the Carpenters Union, filed a motion
3 for reconsideration of the Board's Decision and Order. On or about November 8, 2010, Counsel
4 for the General Counsel filed an opposition to Raymond's motion for reconsideration.
5 Raymond's motion is currently pending, and the Court of Appeals' review proceedings are
6 accordingly stayed.

7 On May 27, 2011, the Board issued its Decision and Order in *Garner/Morrison, LLC*, 356
8 NLRB No. 163 (2011). By its present Notice of Supplemental Authority, Raymond calls to the
9 Board's attention its own decision in *Garner/Morrison* and in addition submits argument that
10 *Garner/Morrison* "requires modification of the remedy" in this case.

11 Section 102.48(d)(1) of the Board's Rules and Regulations provides that a party to a
12 proceeding before the Board may move for reconsideration, "because of extraordinary
13 circumstances." In making a motion for reconsideration, the moving party "shall state with
14 particularity the material error claimed and with respect to any finding of material fact shall specify the
15 page of the record relied on."

16 It is the Painters Union's position:

- 17 1) that Raymond may not properly submit a new motion for reconsideration or submit
18 argument supporting its current motion for reconsideration in the guise of calling
19 the Board's attention to supplemental authority;
- 20 2) that Raymond's Notice of Supplemental Authority, however construed, does not
21 present "extraordinary circumstances" within the meaning of Section 102.48(d)(1);
- 22 3) that the Board's Decision and Order in *Garner/Morrison* does not, in fact,
23 establish a new remedy nor affect the remedy in the instant case; and
- 24 4) that, however, because the Painters Union originally excepted to the ALJ's
25 decision on the ground that the remedy ordered did not fully correct Respondents'
26 violations and because the Painters Union intends to pursue that issue on review, if

27 ///

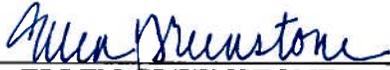
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the Board is inclined to reconsider its Decision and Order in this case, it should invite further briefing.

DATED: July 12, 2011

ELLEN GREENSTONE
ROTHNER, SEGALL & GREENSTONE

By 
ELLEN GREENSTONE
Attorneys for Southern California Painters and
Allied Trades District Council No. 36, International
Union of Painters and Allied Trades, AFL-CIO

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 510 South Marengo Avenue, Pasadena, California 91101.

I hereby certify that a copy of **CHARGING PARTY SOUTHERN CALIFORNIA PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 36, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL-CIO'S RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY RE RESPONDENT RAYMOND INTERIOR SYSTEMS, INC.'S MOTION FOR RECONSIDERATION** in Cases 21-CA-37649 AND 21-CB-14259 was submitted by E-filing to the Offices of the Executive Secretary of the National Labor Relations Board on July 12, 2011. The following parties were served with a copy of the same document by electronic mail:

Irma Hernandez, Counsel for the General Counsel
National Labor Relations Board, Region 21
Irma.Hernandez@nlrb.gov

William Pate, Acting Regional Director
National Labor Relations Board, Region 21
William.Pate@nlrb.gov

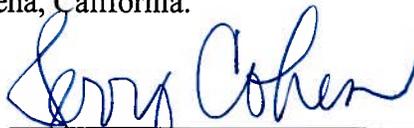
James A. Bowles, Attorney at Law
Hill, Farrer & Burrill, LLP
JBowles@hillfarrer.com

Richard Zuniga, Attorney at Law
Hill, Farrer & Burrill, LLP
RZuniga@hillfarrer.com

Kathleen M. Jorgenson, Attorney at Law
DeCarlo, Connor, & Shanley
kjorgenson@deconsel.com

Daniel Shanley, Attorney at Law
DeCarlo, Connor, & Shanley
dshanley@deconsel.com

Executed on July 12, 2011, at Pasadena, California.



JERRY COHEN