

UNITED STATE OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

SPURLINO MATERIALS, LLC

and

COAL, ICE BUILDING MATERIAL,
SUPPLY DRIVERS, RIGGERS, HEAVY
HAULERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 716,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA,

CASES 25-CA-030053
25-CA-030054
25-CA-030080
25-CA-030104
25-CA-030156
25-CA-030179
25-CA-030362

**RESPONDENT'S RESPONSE TO ACTING GENERAL COUNSEL'S
MOTION TO CORRECT INADVERTENT ERROR**

Respondent, Spurlino Materials, LLC ("Spurlino Materials"), by counsel and, due to the fact that the Board has no jurisdiction to grant Acting General Counsel's request, hereby submits its Response to Acting General Counsel's Motion to Correct Inadvertent Error ("General Counsel's Motion") and states as follows:

1. General Counsel's Motion constitutes an incorrect, untimely attempt to modify the Board's March 31, 2009 Decision and Order because the Board no longer has jurisdiction to do so.

2. On its face, General Counsel's Motion for the first time protests the Board's March 31, 2009 failure to provide a make-whole remedy for Gary Stevenson for his suspension and discharge. *In re Spurlino Materials, LLC*, 353 NLRB 1198 (2009).

3. General Counsel, however, had an opportunity to appeal or otherwise address this failure prior to the Board's follow-up August 9, 2010 three-member Decision, which affirmed and adopted the March 31, 2009 Decision and Order. *In re Spurlino Materials, LLC*, 355 NLRB No. 77 (2010). General Counsel nevertheless failed to do so.

4. General Counsel likewise had an opportunity to correct the Board's failure when General Counsel filed its Petition to Enforce the Board's Order with the U.S. Court of Appeals for the Seventh Circuit. General Counsel did not do so, and the Court of Appeals entered its Judgment enforcing the Board's Decision and Order as written. *Spurlino Materials, LLC v. N.L.R.B.*, 645 F.3d 870 (7th Cir. 2011).

5. Section 102.49 of the Board's Rules and Regulations holds that "until a transcript of the record in a case *shall have been filed in a court*, within the meaning of section 10 of the Act, the Board may at any time upon reasonable notice modify or set aside, in whole or in part, any findings of fact, conclusions of law, or order made or issued by it." *NLRB Rules and Regulations*, Section 102.49 (emphasis supplied).

6. Once the Board submits an Order to the Court for enforcement, and the Order is enforced, the Board no longer possesses jurisdiction to modify the Order under Section 102.49. *Traverse City Osteopathic Hospital*, 260 NLRB 1060, 1060 (1982); *Royal Typewriter Company*, 239 NLRB 1, 2 (1978).

7. Any attempt to modify a Board Order after enforcement by a Court is considered untimely because jurisdiction to modify the Order no longer resides with the Board, but instead with the U.S. Supreme Court. *Id.*

8. The Acting General Counsel's Motion to Correct Inadvertent Error is an untimely attempt to modify the Board's March 31, 2009 Order, as the Board no longer possesses jurisdiction.

WHEREFORE, Respondent, Spurlino Materials, requests that the Acting General Counsel's Motion be denied and for all other necessary and proper relief.

Respectfully submitted,

/s/ A. Jack Finklea
A. Jack Finklea

Attorney for Respondent,
Spurlino Materials, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Response to Acting General Counsel's Motion to Correct Inadvertent Error was filed electronically on January 13, 2012. On the same date a copy of the filing was served by electronic mail upon the following persons:

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