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Attorneys for
HAWAIIAN DREDGING
CONSTRUCTION COMPANY, INC.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20, SUBREGION 37

HAWAIIAN DREDGING
CONSTRUCTION COMPANY, INC.,

and

INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS AND
HELPERS, LOCAL 627.

Case 37-CA-008316

HAWAIIAN DREDGING CONSTRUCTION
COMPANY, INC.'S **REPLY TO
COUNSEL FOR THE ACTING
GENERAL COUNSEL'S OPPOSITION
TO RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT; SECOND
DECLARATION OF TOM VALENTINE;
CERTIFICATE OF SERVICE**

**REPLY TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

Counsel for the Acting General Counsel's Opposition dated February 2, 2012 (the
"Opposition") is flawed in several respects and should be disregarded.

First, the Opposition argues that because Hawaiian Dredging Construction
Company, Inc. ("HDCC") laid off the Boilermaker welders on February 17, 2011 because there

was no contract, a violation of Sections 8(a)(3) and (1) is automatically established. This leap of logic is not supported anywhere in the Opposition or by case law.

Second, in arguing that this case “fits squarely within the parameters” of *Catalytic Indus. Maintenance Co. (CIMCO) and International Brotherhood of Elec. Workers, Local 527*, 301 NLRB 342 (1991), the Opposition ignores a significant distinguishing fact. In *CIMCO*, the case turned on the reason the employer terminated the union employees, *i.e.*, it was attempting to gain an advantage in the parties’ contract negotiations. 301 NLRB at 348. This conduct of the *CIMCO* employer was destructive of the employees’ rights. In contrast to the employer in *CIMCO*, HDCC’s conduct was not motivated by a desire to gain an advantage in contract negotiations with the Boilermakers Union (because there was no contract) or any other unlawful reason. *See* Memorandum In Support of Motion at 3, 10-11. As a union contractor, HDCC only employees field employees who are covered by a collective bargaining agreement between HDCC and a union. Second Declaration of Tom Valentine dated February 3, 2012 (“Valentine Second Decl.”) at ¶ 2. It does not matter whether the worker is a member of the union that referred them, or another union, or no union, as long as the work that is done is performed under a collective bargaining agreement. *Id.* For example, HDCC has rehired welders who were originally referred by the Boilermakers Union (when it had an agreement with that Union) and more recently were referred by the Pipefitters Union. *Id.* HDCC does not know whether these welders changed their membership to the Pipefitters Union, remained a Boilermaker, are members of both Unions, or are not members of either Union. *Id.* Under the Pipefitters CBA, “membership” is defined in Section 7, as merely “the tendering of periodic dues and initiation fees uniformly required as a condition of membership.” *See* Declaration of Tom Valentine dated January 30, 2012, ¶ 15, Exhibit 2 (Pipefitters CBA), § 7.

Thus, when HDCC no longer had a contract with the Boilermakers Union, it did not employ any welders from February 17 through March 1, 2012, until after it entered into a collective bargaining agreement with another union (the Pipefitters Union). *See* Memorandum In Support of Motion at 3, 5. There is no evidence that HDCC discriminated against the employees based on their union affiliation. Thus, far from fitting squarely within *CIMCO*'s parameters, HDCC's case is a round peg that the Opposition is trying to fit into a square hole.

Third, in claiming that Caughman did not work for HDCC at the time he conveyed the availability of employment opportunity through the Pipefitters Union, the Opposition conveniently avoids addressing the Board's July 29, 2011 Determination in which it found that HDCC had lawfully offered employment opportunity through the Pipefitters Union:

The employer offered its employees jobs under the new collective bargaining agree[ment] with the Pipefitters and some of the employees voluntarily chose not to join that Union.

The analysis turns on whether the employees are given the opportunity to work under the new terms and conditions of employment; here becoming members of the Pipefitters and working under the terms of that contract. [Citing *Jack Welsh*.] The Board held that where the employer lawfully offered employee opportunity to work at the changed conditions and employee voluntarily refused, there was no violation.

Declaration of Barry W. Marr dated January 31, 2012, ¶ 3, Exhibit 2. In fact, HDCC asked the Pipefitters Union to accept the welders it had laid off on February 17, 2012 and refer them to HDCC without going through the Pipefitters Union's application process, but the Pipefitters Union denied HDCC's request. *See* Memorandum In Support of Motion at 4-5. Thus, the Opposition fails to rebut the Board's own findings that HDCC offered the welders an opportunity to work by becoming Pipefitters.

CONCLUSION

For the foregoing reasons and for those stated in Hawaiian Dredging Construction Company, Inc.'s opening memorandum of law, its motion for summary judgment should be granted in all respects.

Dated: Honolulu, Hawaii, February 3, 2012.



BARRY W. MARR
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Attorneys for
HAWAIIAN DREDGING
CONSTRUCTION COMPANY, INC.

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SECOND DECLARATION OF TOM
VALENTINE

TOM VALENTINE, declares the following:

1. I make this declaration in further support of Hawaiian Dredging Construction Company, Inc.'s motion for summary judgment. All statements made in this Declaration are based on my personal knowledge and to the best of my recollection.
2. As a union contractor, HDCC only employs field employees that are covered by a collective bargaining agreement between HDCC and a union. It does not matter whether the worker is a member of the union that referred them, or another union, or no union, as long as the work that is done is performed under a collective bargaining agreement. For example, we have rehired welders who were originally referred by the Boilermakers Union (when we had an agreement with that Union) and more recently were referred by the Pipefitters Union. I do not know whether these welders changed their membership to the Pipefitters Union, remained a Boilermaker, are a member of both Unions, or are not a member of either Union. I do know that

under our Pipefitters CBA, "membership" is defined in Section 7, as merely "the tendering of periodic dues and initiation fees uniformly required as a condition of membership."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 3, 2012, Honolulu, Hawaii.



TOM VALENTINE

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on February 3, 2012, a true and correct copy of the foregoing document e-filed and was duly served upon the following by the method of service indicated:

David A. Rosenfeld, Esq.
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*Via E-mail & First Class
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International Brotherhood of Boilermakers,
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Trent K. Kakuda, Esq.
Counsel for the Acting General Counsel
National Labor Relations Board
SubRegion 37
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Honolulu, Hawaii 96813

Via E-mail

DATED: Honolulu, Hawaii, February 3, 2012.

A handwritten signature in black ink, appearing to read 'B. Marr', written over a horizontal line.

BARRY W. MARR
MEGUMI SAKAE

Attorneys for
HAWAIIAN DREDGING
CONSTRUCTION COMPANY, INC.