

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of:

BAJA CONCRETE USA CORP.,  
ROBERTRO CONTRERAS, NEWWAY  
FORMING, INC., and ANTONIO  
MACHADO

from a Final Order of the Decision issued  
by the Director, Seattle Office of Labor Standards

Hearing Examiner File Nos.:

LS-21-002  
LS-21-003  
LS-21-004

**APPELLANT NEWWAY FORMING,  
INC.'S RESPONSE BRIEF TO CITY OF  
SEATTLE AND BAJA CONCRETE'S  
SUPPLEMENTAL CLOSING BRIEFS**

**I. RESPONSE TO SUPPLEMENTAL CLOSING BRIEFS**

While Newway generally concurs with the City of Seattle that Roberto Soto Contreras was an employee or agent of Baja Concrete, Newway refutes some of the allegations made by the City of Seattle in its supplemental brief regarding its characterization of Newway. Notably, the City argues that Baja was integral for Newway to complete their Onni project, but the evidence establishes that was not true. The City further infers that Baja was simply providing workers to Newway, when in reality, Baja was acting as a subcontractor for Newway.

Further, Newway agrees with the City of Seattle that the parties' belief that Roberto Soto Contreras was an employee of Baja is an indication of such employment. Similarly, the Workers' unanimous belief that Baja was their sole employer evidences that Newway was not a joint employer of the Workers.

1) Baja was Not Integral to Newway's Work

1           The City of Seattle argues that without the Workers, Newway would not have been  
2 able to complete their Onni project. The City provides no citation nor evidence to support this  
3 baseless assertion. Rather, the evidence supports that Newway could have finished the Onni  
4 job without Baja. As Kwynne Forler-Grant testified, Newway could have self-performed the  
5 work, as it had its own cement finishers on its own payroll working on the Onni job.<sup>1</sup> Newway  
6 also subcontracts with other subcontractors to perform cement work, and could have  
7 subcontracted with PeopleReady for additional laborers, as it had done in the past. Newway  
8 subcontracted with Baja because it was busy, but it does not mean that Newway depended on  
9 Baja. As a reminder, Newway had been in business in the United States for over 20 years  
10 performing concrete work on various projects, all of which they performed and completed  
11 without Baja.

12           2) The Workers did not Work for Newway

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14           In its supplemental brief, the City provides evidence demonstrating that Roberto Soto  
15 Contreras hired the Workers on behalf of Baja, and that he was an employee of Baja Concrete.  
16 It is clear that Contreras was an employee of Baja, as Contreras was even listed as an employee  
17 on the Baja timesheets on several occasions, and the Baja payroll summaries show Contreras  
18 was listed as an employee and Baja made payments to him.<sup>2</sup> Further, as the City notes in its  
19 brief, Contreras explicitly told Newway's Kwynne Forler-Grant that he was Baja's  
20 Superintendent. Newway agrees with these assertions. However, Newway disagrees with the  
21 City's arguments raised in its supplemental brief to the extent that the City contends that the  
22 Workers worked for Newway. As discussed at length in Newway's closing brief, Newway  
23 contracted with Baja to perform a portion of its scope of work. It did not hire or fire the Workers  
24 or otherwise control their employment status and was not involved with their pay. Newway  
25

26           <sup>1</sup> HEX Hearing, Kwynne Forler-Grant Testimony, Day 9, part 2 at 00:02:54.

<sup>2</sup> HEX Exhibits 12; 43, 101.

1 also did not exercise control over the Workers greater than the typical control subcontractors  
2 exercise over lower-tiered subcontractors at a construction site.

3 3) The Workers in this Case Believed they Worked for Baja  
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5 As the City cites in its supplemental brief, in *Ochoa v. J.B. Martin & Sons Farms, Inc.*,  
6 287 F.3d 1182, 1192 (9th Cir. 2002), when determining whether an independent contractor  
7 relationship exists the court stated that the parties belief or disbelief of the employment relationship  
8 is not determinative, “except insofar as such belief indicates an assumption of control by the one  
9 and submission of control by the other.” Consequently, the City argues, and Newway agrees, that  
10 the parties in this case testified that they believed Contreras was an employee or agent of Baja,  
11 indicating that he was an employee of Baja.

12 Likewise, the same can be said for the subject Workers in this case, none of which  
13 believed they worked for Newway during the period of time that was the subject of the OLS  
14 investigation. The subject Workers also knew of the fracture between their employer Baja, and  
15 Newway. In fact, many of them testified that the Newway employees were treated way better,  
16 and were paid significantly more, including overtime wages. Some of the Workers even went  
17 to work for Newway after they quit working for Baja. The Workers knowing that their  
18 employer was Baja - not Contreras or Newway – supports a finding that Baja was their sole  
19 employer.

20 **II. CONCLUSION**  
21

22 The evidence clearly establishes that Roberto Soto Contreras worked for Baja, and that  
23 Baja was the sole employer of the workers. Newway was not a joint employer of the workers  
24 that were the subject of the OLS investigation.

25 Dated this 12<sup>th</sup> day of January, 2024.  
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**CERTIFICATE OF SERVICE**

The undersigned certified under penalty of perjury under the laws of the state of Washington that on this Friday, January 12, 2024, I caused true and correct copies of the foregoing document to be delivered to the following parties and in the manner indicated below:

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SIGNED at Seattle, Washington this Friday, January 12, 2024.

/s/ Christine J. Smith  
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