UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

KLB INDUSTRIES, INC. d/b/a
THE NATIONAL EXTRUSION AND
MANUFACTURING COMPANY,

Respondent

Case Nos. 8-CA-37672
and 8-CA-37835

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW,

Charging Party
_____/

REPLY OF CHARGING PARTY UAW TO RESPONDENT'S ANSWERING BRIEF

William J. Karges (P57360)
Daniel W. Sherrick (P37171)
International Union, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48216
(313) 926-5216
(313) 926-5240 (fax)
wkarges@uaw.net

I. INTRODUCTION

The Union's Cross-Exception is procedurally sound and the Board should rule on its merits. The Union filed the following cross-exception:

> The Union excepts to the ALJ's failure to find that the Company's refusal to provide request in health care information violated the Act and caused the subsequent lockout to violate the Act (ALJD p. 38-39, l. 1-2, p. 62, l. 1-8).

In the "Question Presented" section of its Brief, the Union frames the question as follows:

> Is the Company's refusal to provide the requested health care information, including clarifying whether it was offering the same medical coverage or substantially the same medical coverage, an additional reason the lockout violated the Act? (Exception No. 1).

Union Cross-Exception Brief p. 10.

The Cross-Exception raises an issue that was part of the Complaint and addressed by both the General Counsel and Union at trial. The Respondents procedural arguments are red herrings and raise none of the due process issues that would warrant rejecting an exception or cross-exception. Respondent's argument regarding the merits of the Union's Cross-Exceptions is also unconvincing. Respondent claims that its October 19 "lockout letter" clarified any ambiguity in its position. That letter, however, does not even address the issue. The Respondent's refusal to clarify its proposal was an additional reason the lockout violated the Act.

II. ARGUMENT

A. The Issue Addressed in the Union's Cross-Exception was part of the Complaint and Trial.

In the Complaint, the General Counsel states that the Company "[f]ailed to provide the Union with necessary and relevant information it requested on or about October 4, 10, 16 and/or 21, 2007, pertaining to bargaining as described below in paragraph 9." (Complaint, p. 6, 7(B)(8)). The Complaint goes on to state, "Since on or about October 4, 2007, and continually thereafter, Respondent has failed and/or refused to furnish the Union with information requested by it as described above in paragraph 9(A) through (D)." (Id.). The allegation that the refusal to provide health care information was a violation of the Act has been part of the General Counsel's case since the Complaint was issued. The General Counsel specifically cites the Union's October 21, 2007 letter in the Complaint, it was an exhibit at trial (G.C. Ex. 39 (a)) and it was addressed by the ALJ. (ALJD, p.21-23)

B. Any Party May File Exceptions or Cross-Exceptions

The Union may raise its own exceptions or cross-exceptions. The NLRB Rules and Regulations state that any party may file exceptions or cross-exceptions to the administrative law judge's decision. Rules and Regulations Section 102.46(a) and (e). *See E.L.C. Electric, Inc.*, 344 NLRB 1200, 1200-1201 fn. 5 (2005) (Respondent filed exceptions, the General Counsel filed an answering brief, and the Union filed cross-exceptions. The Board considered the merits of the cross-exceptions.); *Corporate Interiors, Inc.*, 340 NLRB 732 (2003) (Respondent filed exceptions, and Charging Party Union filed cross-exception.

Board considered the merits of the cross-exception.). The Union's Cross-Exception in this case is procedurally proper and the Board should rule on its merits.

C. The Union's Cross-Exception Was Not Waived

The main issue in the Union's Cross-Exception is whether the Company's refusal to provide the requested health care information was an additional reason the lockout violated the Act. (Union's Cross-Exception Brief, p. 10). The Union clearly outlined the error it contended the judge committed and the grounds for believing a portion of the judge's decision should be overturned. The Respondent points out that the Union's Cross-Exception appears to be directed at page 33 of the ALJ Decision. (Respondent Answering Brief, p. 8.) The Union cited footnote 25 on page 33 twice in its Brief.

An exception or cross-exception does not necessarily need to be in strict compliance with Section 102.46 of the Rules and Regulations, but rather, in substantial compliance. *In re Loudon Steel, Inc., 340 NLRB 307 fn. 1 (2003); Days Hotel of Southfield, 311 NLRB 856 fn. 2 (1993); James Troutman & Associates, 299 NLRB 120 (1990); Monarch Machine Tool Co., 227 NLRB 1265 fn. 2 (1977)*. The Union clearly set forth its position and the Company had a chance to respond to the merits of the argument. The Board is adequately apprised of the issues and should rule on the merits. The Union's Cross-Exceptions are in compliance (and in any case substantial compliance) with the NLRB Rules and Regulations.

D. The Union's Cross-Exception Should Be Granted

The Respondent states that the Union's Cross-Exception should be rejected because:

> Contrary to the Union's assertions, KLB unambiguously told the Union what it needed to do to end the lockout. KLB's October 19 lockout letter plainly stated that: "such lockout will continue until the bargaining unit members ratify the Company's last, best and final offer which was provided to the Union on October 3, 2007." (G.C. Exh. 38). Even were KLB's October 18 letter unlawfully ambiguous standing alone (an absurd conclusion based on the timed offers own provisions and the October 10 bargaining session), the October 19 lockout letter cured any ambiguity.[1]

The Respondent's first point, that the October 19 lockout letter plainly stated that the Union could end the lockout by accepting the Company's last, best and final offer begs the question whether the Respondent's last, best and final offer represented a legitimate bargaining position. Respondent's next argument that the October 19 lockout letter cured any ambiguity is curious because it does not address the ambiguity in any way. The Company's proposal articulated in its October 18 letter, was to provide "substantially the same medical coverage" or "the same medical coverage." Respondent's October 19 lockout letter does not even address the ambiguity, much less cure the ambiguity. The Union pointed out the ambiguity again and asked for clarification in its October 21 letter. The Company refused to respond and, instead, locked out employees.

[1] The Respondent also states that "the ALJ's finding that the October 3 final offer's "substantially similar" health insurance proposal was lawful is unchallenged." (Respondent's Answer, p. 10.) That is untrue. The Union's Cross-Exception attacked the conclusion that it was a lawful proposal. The issue, however, is not whether it would have been lawful had the Company made the proposal. The issue is whether the Union was entitled to know which health care proposal the Respondent was making in its October 3rd offer.

III. CONCLUSION

The Union's Cross-Exception is procedurally sound. The issue raised in the Cross-Exception was part of the Complaint and was part of the evidence submitted at trial. The Cross-Exception has not been waived. Respondent's refusal to clarify its proposal was an additional reason the lockout violated the Act. For these reasons, the Union requests that the Board grant the Cross-Exception.

Respectfully Submitted,

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW AFL-CIO

By: /s/ William J. Karges
William J. Karges, Associate General Counsel
Daniel W. Sherrick, General Counsel
8000 E. Jefferson Ave.
Detroit, MI 48009
(313)926-5216
Attorneys for International Union, UAW

Dated: June 22, 2009

STATEMENT OF SERVICE

The undersigned hereby certifies and declares that a true copy of the International Union, UAW's Cross-Exceptions and Brief In Support of its Exceptions was served upon Kerry P. Hastings, Respondent's Counsel, and Karen Neilsen, Counsel for the General Counsel, by Electronic Mail on June 22, 2009.

By: /s/William J. Karges
William J. Karges
8000 E. Jefferson Ave.
Detroit, MI 48009
(313)926-5216
Attorney for International Union, UAW

Dated: June 22, 2009