

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

WALT DISNEY WORLD CO.

and

Case 12-CA-25889

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 1625

GENERAL COUNSEL'S MOTION TO STRIKE RESPONDENT'S REPLY BRIEF

On August 19, 2009, Respondent electronically filed its Reply to General Counsel's Answering Brief to Respondent's Exceptions and Brief in Support of Exceptions to the Decision of the Administrative Law Judge. As discussed below, the Board should strike Respondent's Reply Brief for two reasons—1) because Respondent failed to properly serve its Reply Brief on the parties and 2) because Respondent uses inflammatory language to inaccurately describe the content of General Counsel's Answering Brief to Respondent's Exceptions and Brief in Support of Exceptions to the Decision of the Administrative Law Judge.

Although it filed its Reply Brief electronically, Respondent failed to serve a copy of the brief on General Counsel by electronic mail as required by Section 102.114(i) of the Board's Rules and Regulations.¹ Rather, the Certificate of Service indicates that Respondent served its brief on General Counsel and United Food and Commercial Workers Union, Local 1625 by regular U.S. Mail. Respondent's Reply Brief should be stricken because it was not properly served.

¹Respondent failed to serve its brief by email despite the fact that, on August 18, 2009, in response to an inquiry from the law firm representing Respondent, Counsel for General Counsel explained that the Board's electronic filing process did not provide for automatic service and that documents filed electronically had to be served by email.

Furthermore, in its Reply Brief, Respondent states that General Counsel “asserts in its Answering Brief that Disney’s reorganization decision was ‘driven by labor costs,’” and additionally states that “General Counsel has willfully misrepresented volumes of record testimony that contradicts this claim.” (RB at 4).² The paragraph in General Counsel’s Answering Brief to which Respondent is apparently referring reads as follows:

Williams claimed that she wanted the restructuring to have minimal or no effect on cast members in terms of income. (Tr. 601:17—602:17). She testified that the restructuring plan would be an investment that began at \$1.2 million or \$1.3 million dollars a year and increased to \$2.3 million dollars a year. (Tr. 601:17—602:17). Williams testified that the cost of the restructuring plan is driven by labor costs of the additional managers and the managers’ incentive plan, for a total cost of \$8 million dollars over five years, offset by \$1 million in price increases. (Tr. 601:17—602:17, 605:13—606:8). (AB at 17).

This paragraph makes no assertions regarding Respondent’s purported reasons for its restructuring plan, but does accurately reflect manager Ann Williams’ testimony that:

. . . It was very, very clear to us very early on in the decision that this would be one that we wanted to minimize or not effect any cast member in terms of income. But in addition to that, not only that, it would be a cost, an investment to the company in our five-year plan that was \$1.2 or \$1.3 million year one and then built up to \$2.3 million over a five-year period that we would have to invest in this plan in order to make it work.

Those dollar amounts are really driven by two sources. One would be the labor costs that it would take to employ additional managers, the 24 additional managers. The second one would be in order to have a pay for performance-incentive plan. It would cost us money to actually build that into the plan. . . . (Tr. 601:17—602:17).

and her testimony that:

. . . The second section within the document shows really kind of cost mitigation strategies, and they are largely approximately \$1 million around pricing that was built in which we saw, as a I mentioned earlier, a benefit in two ways. . . . (Tr. 605:13—606:8).

² Tr. refers to the hearing transcript. The first number in the parenthesis refers to the page number of the hearing transcript and numbers following the colon refer to the line numbers of the page. AB refers to General Counsel’s Answering Brief to Respondent’s Exceptions and RB refers to Respondent’s Reply Brief to General Counsel’s Answering Brief.

Respondent's assertion that General Counsel "willfully misrepresented volumes of record testimony that contradicts its claim" is clearly unfounded and is inflammatory. Thus, at a minimum, Section (II)(D) of Respondent's Reply Brief should be stricken from the record.

WHEREFORE General Counsel respectfully requests that the Board strike all, or a portion, of Respondent's Reply Brief for the reasons set forth above.

DATED at Tampa, Florida, this 20th day of August 2009.

Respectfully submitted,

/s/ Christopher C. Zerby /s/

Christopher C. Zerby
Counsel for the General Counsel
NLRB Region 12
201 East Kennedy Blvd., Suite 530
Tampa, FL 33602

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, General Counsel's Motion to Strike Respondent's Reply Brief in Case 12-CA-25889 was filed electronically with the Office of the Executive Secretary, National Labor Relations Board, and was served by electronic mail on Peter Zinober, Esq., Greenberg Traurig, P.A. (zinoberp@gtlaw.com) and Richard Siwica, Esq., Egan, Lev & Siwica, P.A. (rsiwica@eganlev.com) this 20th day of August 2009.

/s/ Christopher C. Zerby /s/

Christopher C. Zerby
Counsel for the General Counsel
National Labor Relations Board
201 East Kennedy Boulevard, Suite 530
Tampa, Florida 33602
(813) 228-2693