

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

DRESSER-RAND COMPANY,	§		
	§		
Respondent	§		
	§	Cases:	3-CA-26543
and	§		3-CA-26595
	§		3-CA-26711
IUE-CWA, AFL-CIO, LOCAL 313,	§		3-CA-26943
	§		
Charging Party	§		

**RESPONDENT’S BRIEF IN REPLY TO THE GENERAL COUNSEL’S ANSWERING
BRIEF TO RESPONDENT’S BRIEF IN SUPPORT OF EXCEPTIONS TO
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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Dresser-Rand Company (“Company” or “DRC”) hereby submits this Reply Brief to the General Counsel’s (“GC”) Answering Brief and states as follows¹:

**I.
ARGUMENT AND AUTHORITY**

A. DRC Lawfully Permitted Crossovers to Return to their Jobs Following the Lockout.

The GC’s main argument is that the lockout placed the Crossovers² in the same legal position as the full-term strikers, thereby making it unlawful for the Crossovers to return to work ahead of the strikers.³ The GC’s argument is contrary to the United States Supreme Court’s decision in *TWA v. Independent Federation of Flight Attendants*,⁴ and its logical application to the facts of this case.⁵

In *TWA*, the Court expressly characterized crossovers as permanent replacements, ruling that they have the same rights and legal protections following the termination of a work stoppage; *i.e.*, the jobs they occupy are not available openings for *Laidlaw* purposes.⁶ The Supreme Court’s (and the Board’s) characterization of crossovers as permanent replacements and decision to extend to them the same protections and rights logically also means that

¹ Citations to the GC’s Answering Brief herein are designated by “GC Ans. Br.” followed by the appropriate page number(s). Citations to DRC’s Brief in Support of its Exceptions are designated by “DRC Br. in Supp. of Exc.” followed by the appropriate page number(s). The Administrative Law Judge in this matter is referred to herein as the “ALJ,” and citations to his decision in this case are designated by “ALJD” followed by the appropriate page and line number.

² Employees who had previously abandoned the strike and returned to work.

³ Specifically, the GC contends that “once [DRC] locked out the crossovers, they stood in the same shoes as the full-term strikers,” and “[a]t the end of the lockout, they were entitled to be treated equally with the strikers, but not to be treated better than them.” (*See* GC’s Ans. Br. at 12). Not surprisingly, the GC does not cite any authority for this proposition, **for there is none.**

⁴ 489 U.S. 426 (1989).

⁵ Acceptance of the GC’s argument would contravene the balance struck in *TWA* providing protection for employees’ Section 7 rights to refrain from striking. Employees, like the Crossovers, who abandon a strike supported by their coworkers risk the opprobrium of their peers and continuing tension in the workplace following the strike. Perhaps that is why, as the Supreme Court noted in *TWA*, the Act protects not only an employee’s right to refrain from striking, but also “employees’ rights to the benefit of their individual decisions not to strike.” 489 U.S. at 436. The GC’s argument here robs the Crossovers of the benefit of their legally-protected decisions to abandon the strike.

In turn, the undermining of the rights of crossovers would negatively affect employers’ use of their legitimate economic weapons. In situations like those here, knowing that it would be placing crossovers in the same position as full-term strikers, an employer may well be dissuaded from implementing a lockout – an appropriate measure in some situations to bring about a contract settlement.

⁶ *See id.* at 436; *Waterbury Hosp.*, 300 NLRB 992, 1009 (1990), *enfd.* 950 F.2d 849 (2d Cir. 1991) (expressly characterizing crossovers as permanent replacements, justifying denial to strikers of reinstatement to positions held by those employees).

crossovers (like permanent replacements) are insulated from displacement by a temporary interruption in employment as set forth in *Aqua-Chem*.⁷ Just as, under *Aqua-Chem*, a temporarily laid off permanent replacement retains his position, the Crossovers here were not subject to displacement as a result of the brief lockout in view of their reasonable expectation of recall following the lockout.⁸

Attempting to circumvent *Aqua-Chem* and its applicability to this case (as well as the ALJ's decision and his own admissions), the GC makes three unsupported and misleading points. First, the GC asserts that the Crossovers and full-term strikers occupied the same position because “[t]he *end of the lockout* triggered the *Laidlaw* rights of both the crossovers and the full-term strikers.”⁹ Not only is this assertion unsupported, the GC also does not even attempt to explain why this is, or should be, so. In any event, the GC's novel contention is wrong. What triggered the full-term strikers' *Laidlaw* rights was the Union's offer to return before the lockout was instituted, and those rights were merely delayed by the lockout. On the other hand, at the time of that offer, the Crossovers had already abandoned the strike, had been reinstated and were working in the plant. Thus, the Union's offer could not and did not trigger any rights – *Laidlaw* or otherwise – of the Crossovers. The offer simply had no effect on the Crossovers, who already held positions with DRC and needed no *Laidlaw* rights to secure those positions.¹⁰

Second, the GC asserts that, following the lockout, the Crossovers “had no greater expectation of recall than the strikers.”¹¹ Even if true, this is not the standard. Rather, under *Aqua-Chem*, the question is whether the Crossovers had a reasonable expectation of recall, not

⁷ 288 NLRB 1108 (1988).

⁸ This is especially so in the present case given the ALJ's findings and the GC's admissions that a lockout is like a layoff. *See also Am. Ship Bldg. Co.*, 380 U.S. at 301-02 (“The question presented is...whether an employer commits an unfair labor practice...when he temporarily lays off or ‘locks out’ his employees during a labor dispute to bring economic pressure in support of his bargaining position.”) (emphasis added). If, for purposes of analyzing DRC's treatment of the Crossovers at the conclusion of the lockout, a lockout is like a layoff, it follows that the rights of a permanent replacement under *Aqua-Chem* will likewise apply to and shield a locked-out crossover from displacement when the lockout ends.

⁹ *See* GC's Ans. Br. at 13.

¹⁰ The fact that there are no allegations or findings of unlawful direct dealing by DRC with the Crossovers concerning their return to work further confirms that the status of the Crossovers and the full-term strikers is different and that the GC's attempt to compare them for discrimination purposes is invalid.

¹¹ GC's Ans. Br. at 13.

whether such expectation was comparable to or greater than that of the full-term strikers. Here, there can be no doubt – and the GC does not dispute – that the Crossovers had a reasonable expectation that they would be recalled following the lockout.¹²

Third, the GC misleadingly suggests that, because the Crossovers were locked out and not temporarily replaced, *Bud Antle, Inc.*¹³ and related cases have no applicability here.¹⁴ The GC is addressing an argument not made. The argument DRC made and that the GC needed to address is that the Crossovers did not lose their positions by virtue of the lockout. As the Board observed in *Bud Antle*, a locked-out employee cannot be permanently replaced during the lockout and must be reinstated following the lockout, even if temporarily replaced.¹⁵ That being the case, unlike the full-term strikers who had been permanently replaced during the preceding strike, the Crossovers could only be temporarily replaced (if at all) during the lockout and, contrary to the GC’s contentions, were entitled to be reinstated to the positions they held prior to the lockout once it ended.¹⁶

B. DRC’s Lockout Was Not Motivated by Union Animus.

In his Answering Brief, the GC argues that DRC’s lockout was unlawfully motivated on two grounds: (i) the lockout treated employees disparately along Section 7 lines; that is, DRC’s decision concerning whom to lock out had a “perfect correlation” with the employees’ choices about whether to strike; and (ii) DRC’s unlawful motivation can be inferred from the other unfair labor practices (“ULP’s”) found by the ALJ. Both arguments fail.

¹² See DRC’s Br. in Supp. of Exc. at 10-11. After asserting that the end of the lockout triggered equal reinstatement rights and expectations of recall for the Crossovers and the full-term strikers, the GC then incredibly states that “[t]he lockout of the crossovers did not trigger anything” and candidly admits that he has never contended and is not now contending that “the lockout of the crossovers created ‘vacancies’ that [DRC] was required to fill with striking employees.” See GC’s Ans. Br. at 13 & n. 24. If that is so, then the Crossovers’ status vis-à-vis the full-term strikers must be assessed as of the time immediately preceding the lockout. At that point, under *TWA*, the Crossovers’ positions were not vacant, and DRC could not be required to displace them in favor of the full-term strikers. See 489 U.S. at 438.

¹³ 347 NLRB 87 (2006).

¹⁴ See GC’s Ans. Br. at 14.

¹⁵ See 347 NLRB at 89 (citing *Harter Equip.*, 280 NLRB 597 (1986)).

¹⁶ The GC also argues that whether DRC was legally obligated to lock out the Crossovers is irrelevant. (See GC’s Ans. Br. at 14). That DRC was legally required to lock out the Crossovers is certainly relevant to a determination of the Crossovers’ status vis-à-vis the full-term strikers, particularly whether the Crossovers had a reasonable expectation of recall following the lockout under *Aqua-Chem*.

First, this case does not present the “perfect correlation” that the courts in *Local 15, I.B.E.W. v. NLRB*¹⁷ and *USW, AFL-CIO v. NLRB*¹⁸ found unlawful.¹⁹ As the GC admits, the “perfect correlation” is missing here because DRC locked out the Crossovers.²⁰ In fact, DRC’s decision to lock out the Crossovers means this case presents the exact opposite situation from the one confronting the courts in those cases.

Second, as more fully set forth at pp. 38-45 of DRC’s Brief in Support of its Exceptions, the other ULP’s found by the ALJ do not support any inference that the lockout was unlawfully motivated.²¹ The GC appears to have implicitly accepted this argument by barely mentioning the deficiencies in the ALJ’s animus findings.

The GC contends that all of the found ULP’s are “acts of [DRC],” and it therefore does not matter that the individuals involved in the various decisions are different.²² The GC, however, does not dispute that different decision makers were responsible for the various alleged violations and does not attempt to explain why the difference in decision makers does not or should not matter.²³

The GC also argues that it is irrelevant that the other ULP’s from which the ALJ inferred unlawful motivation do not themselves turn on DRC’s motivation.²⁴ His sole contention in support is that DRC did not cite any authority for its argument. Yet, notably, the GC himself does not cite any authority to support his argument. Further, the GC does not even dispute that the other alleged ULP’s from which the ALJ inferred animus do not turn on DRC’s motivation.

¹⁷ 429 F.3d 651 (7th Cir. 2005).

¹⁸ 179 Fed. Appx. 61 (D.C. Cir. 2006).

¹⁹ The courts’ discussion of this issue was *dicta* in both cases, inasmuch as both courts held that the respective employers had not satisfied their threshold burden of presenting a substantial and legitimate business justification for the lockout. (See GC’s Ans. Br. at 23).

²⁰ See GC’s Ans. Br. at 24.

²¹ In support of his arguments to the contrary, the GC again cites absolutely no authority. The GC’s failure in this regard is ironic given that the GC repeatedly faults DRC – erroneously – for the same.

²² See GC’s Ans. Br. at 24-25.

²³ Any such argument would constitute quite a departure from well-established authority under the Act (as well as every other body of U.S. labor and employment law).

²⁴ See *id.* at 25.

The GC also does not even attempt to explain how or why animus should be inferred from violations that themselves do not turn on one's motivation.²⁵

Next, the GC argues that at least some of the other found ULP's had a "pervasive impact" on the bargaining unit.²⁶ Again, the GC cites no authority for his argument (nor does he attempt to distinguish the apposite authority cited by DRC), and he does not provide any explanation whatsoever as to how these other ULP's had more than a minimal impact on the bargaining unit.²⁷

In addition, the GC contends that animus can be inferred from the alleged preferential treatment afforded Crossovers and the alleged failure to bargain over the strikers' return to work because they "are relatively contemporaneous with the lockout."²⁸ These alleged violations, however, occurred (if at all) after the lockout ended and were related to and sprang from the end of the lockout, not DRC's decision to initiate the lockout in the first instance. Thus, as set forth at pp. 42-43 of DRC's Brief in Support of its Exceptions, any inference of animus that could be drawn from these alleged violations is eliminated.

Finally, the GC (like the ALJ) inexplicably ignores all of the positive evidence of good faith and lack of animus militating against a finding that DRC's lockout was unlawfully motivated.²⁹

²⁵ In essence, under the GC's position, the mere happenstance of other ULP's committed by the same employer at the same location – no matter how serious or disconnected they are from the decision at issue, and notwithstanding whatever evidence there is to the contrary – supports an inference of unlawful motivation. The Board should neither countenance nor endorse such an illogical conclusion.

²⁶ See *id.* at 25-26.

²⁷ The GC states that DRC's alleged unilateral implementation of the return to work process "surely had the most pervasive impact of all the unfair labor practices found." (See GC's Ans. Br. at 26). Even assuming that DRC violated the Act as alleged, the GC does not explain how that violation purportedly had a pervasive impact on the bargaining unit. Nor does the evidence support such a conclusion. There is no evidence, allegation or finding that the implemented process was discriminatorily applied or resulted in the denial of or delay in reinstatement of any employees.

²⁸ *Id.* at 26.

²⁹ See DRC's Br. in Supp. of Exc. at 44-45. This case – which, before the lockout, involved a long strike and the hiring of permanent replacements, and, after the lockout, a declaration of impasse and DRC's implementation of its final offer – presented many opportunities to challenge DRC's decisions and behavior. Notably, however, there were no allegations taken to complaint that DRC violated the law with respect to any of these actions, nor were there any independent 8(a)(1) allegations or findings to demonstrate animus. Thus, this case stands in stark contrast to those where the Board has found a discriminatory lockout, which almost invariably involve evidence of efforts to discourage union activity, injure the bargaining representative or evade a bargaining obligation. In fact, in *Cent. Ill. Pub. Serv.* – the sole lockout case cited by the ALJ on this point – the Board found that the lockout was lawful and declined to infer animus from other violations of the Act, in large part because of the evidence of the employer's overall good faith during negotiations. 326 NLRB 928, 933-34 (1998). Such is the case

C. DRC Fulfilled its Bargaining Obligations Concerning the Strikers' Return.

Despite DRC's extensive briefing concerning the Union's inaction and waiver of bargaining over the return to work process, the GC does not say one word about the Union's serial inaction, nor why such inaction should be excused in this case.³⁰

The GC's *fait accompli* argument similarly fails. There is no evidence, for example, that DRC: (i) notified employees of its proposal prior to or simultaneous with notice to the Union; (ii) developed its proposal after significant expense and/or time, indicating that it had a firm commitment to the proposal or an unwillingness to bargain over any changes; or (iii) misled the Union about its proposal.³¹ Similarly, there is no evidence that the Union objected to DRC's proposal (it opted, instead, to do **absolutely nothing**), let alone that DRC responded to any such objection by stating that the matter was not subject to negotiation. Indeed, there is no evidence that the Union itself – at the time of DRC's proposal – even subjectively believed that it had been presented with a *fait accompli*.

Rather, the undisputed evidence plainly demonstrates that DRC provided adequate notice to the Union and an opportunity to bargain, but the Union, through inaction, lack of diligence, and failure to engage with the Company in any way whatsoever waived its bargaining rights.³²

here. DRC played within the rules of bargaining and won, and now the GC is attempting to mitigate that victory on the thinnest reed of an argument.

³⁰ The GC also does not attempt to distinguish *Emhart Indus.*, 297 NLRB 215 (1987). Instead, he cites *Laro Maint. Corp.*, 333 NLRB 958 (2001) and *Champion Int'l Corp.*, 339 NLRB 672 (2003), two inapposite cases. *Laro* involved a unilateral implementation of a layoff on less than one full day's notice to the union. When the union objected, the employer responded that the issue was not negotiable. Thus, the judge found that the employer presented the union with a *fait accompli*. See 333 NLRB at 959. Here, DRC gave the Union greater advance notice of its proposal, and unlike in *Laro*, the Union never objected – or, indeed, responded in any way – to DRC's proposal.

In *Champion Int'l*, the same day the employer informed the union that it was selling the business, but before discussing the issue with the union, the employer informed the employees that they could qualify for severance benefits if they satisfied certain conditions. The union only learned of the severance pay offer by virtue of the employer's communications to the employees. As a result, the Board found that the employer had unlawfully unilaterally implemented the severance pay proposal. See 339 NLRB at 672. Unlike the employer in *Champion Int'l*, however, DRC gave the Union advance notice of its return to work proposal and did not implement that proposal (by communicating directly with the employees or otherwise) before giving the Union ample opportunity to respond.

³¹ The GC asserts that DRC's proposal to use a mix of seniority and performance to recall the strikers constituted a new concept and implies that this excuses the Union's failure to respond. (See GC's Ans. Br. at 21). The key fact is that DRC communicated its proposal to the Union and the Union failed to respond at all, not the specifics of DRC's proposal. Surely, any reasonable union, when confronted with a "new concept," would ask for an explanation or information, neither of which the Union did here.

³² The GC implies that DRC engaged in underhanded tactics by presenting its proposal via email and fax to the Union and its lead negotiator and that the Union should somehow therefore be excused from its failure to look at

D. DRC Lawfully Discharged Kelvin Brown for Engaging in Serious Strike Misconduct.³³

The GC did not except to and in fact acknowledges the ALJ's findings that (i) DRC had an honest belief that Kelvin Brown ("Brown") engaged in picket line misconduct; and (ii) the GC failed to carry his burden of proving that Brown did not in fact engage in such misconduct. The GC further readily admits that the only issue with respect to Brown's discharge is whether his misconduct was sufficiently serious to warrant discharge.³⁴ The GC nevertheless argues that Brown's discharge was unlawful because it preceded Brown's trial and conviction for disorderly conduct related to the incident in question.³⁵ This is irrelevant. The fact that DRC did not rely on Brown's conviction does not speak to the seriousness of Brown's misconduct. The fact that Brown was tried and convicted of disorderly conduct, though, certainly supports a finding that his misconduct was serious enough to warrant discharge.³⁶ For the reasons set forth in DRC's Brief in Support of its Exceptions (*see pp. 34-38*), the ALJ erred in concluding that Brown's misconduct was not sufficiently serious to warrant discharge.³⁷

or respond to the proposal. (*See GC's Ans. Br. at 19 & n. 31*). The record evidence shows, however, that DRC simply presented its proposal as the Union itself had requested (namely, by email and fax) and when it had previously promised the Union it would do so. Further, despite having requested the proposal by email and fax because of a weekend trip, the Union's lead negotiator admittedly decided not to even review the document until he returned to his office the following day.

³³ The GC contends that the ALJ correctly found that DRC unlawfully suspended Marion Cook. (*See GC's Ans. Br. at 28-29*). For the reasons set forth in DRC's Brief in Support of its Exceptions (*see p. 1 n. 3*), the ALJ erred.

The GC also contends that the ALJ correctly found that DRC unilaterally eliminated paid lunch periods on weekend overtime shifts, arguing that there was a past practice of such lunch breaks that became an implied contract term and an established term and condition of employment. (*See GC's Ans. Br. at 26-28*). The authority the GC relies on is inapposite. Each case he cites involved a mid-term modification of a contract term in violation of Section 8(d). *See St. Vincent Hosp.*, 320 NLRB 42 (1995); *Bonnell/Tredegar Indus., Inc.*, 313 NLRB 789, 790-92 (1994); *C&S Indus., Inc.*, 158 NLRB 454, 457 (1966). Here, DRC lawfully changed the practice after reaching a valid impasse in negotiations for a new collective bargaining agreement that cut off all such past practices, and, for the reasons set forth in DRC's Brief in Support of its Exceptions (*see p. 1 n. 5*), the ALJ erred in finding that DRC violated the Act.

³⁴ *See GC's Ans. Br. at 5*.

³⁵ *See id.* at 4 & n. 5.

³⁶ *See DRC's Br. in Supp. of Exc. at 38 & n. 165*.

³⁷ The GC's attempted minimization of the Brown incident and its impact on other picketers cannot be squared with the undisputed fact that picketers were inflamed and yelled incessantly at the police officer who witnessed the incident and arrested Brown. (*See GC's Ans. Br. at 7-8*). This evidence clearly supports a finding that Brown engaged in misconduct warranting discharge. (*See DRC's Br. in Supp. of Exc. at 37*). Further, the GC has misleadingly asserted that another incident of strike misconduct involving Allan Owlett – who the ALJ concluded, without exception, was lawfully discharged – occurred "away from the picket line." (*See GC's Ans. Br. at 9 & n. 18*). In fact, Mr. Owlett engaged in the misconduct – namely, throwing a drink at a nonstriker – very near the plant entrance where picketers blocked ingress/egress. (ALJD p. 18, l. 9-39).

E. DRC Lawfully Denied Certain Returning Strikers the Right to Immediately Take Advantage of Vacation Benefits.

The GC contends that the ALJ correctly found DRC's denial of vacation benefits to 23 full-term strikers unlawful, arguing that those benefits had accrued prior to the strike.³⁸ The GC, however, does not even address DRC's argument that its denial of such benefits was (consistent with the applicable standard of review) based on a reasonable and arguably correct, nondiscriminatory interpretation of the relevant contractual provisions. In any event, for the reasons set forth in DRC's Brief in Support of its Exceptions (*see* pp. 27-34), the vacation benefits were not accrued, and the ALJ erred in finding that DRC unlawfully denied certain strikers immediate use of vacation benefits.³⁹

F. The ALJ's Recommended Remedy and Order is Improper.

In responding to DRC's exceptions to the ALJ's recommended *status quo ante* remedy, as an alternative to *Alaska Pulp Corp.*⁴⁰ – the discredited case cited by the ALJ – the GC cites yet another inapposite case, *KSM Indus.*⁴¹ Neither case supports the recommended Remedy.⁴²

The GC's additional arguments in support of the recommended Remedy are equally unavailing. He asserts that the process used by DRC is "infected by" the alleged preferential treatment afforded the 13 Crossovers.⁴³ The ALJ, however, did not find that DRC's recall process was "infected by" anything – much less its alleged unlawful preferential treatment of the

³⁸ *See* GC's Ans. Br. at 29-35.

³⁹ As did the ALJ, the GC erroneously relies on an arbitration decision from 1987 to support his argument that the vacation benefits accrued before the strike. (*See* GC's Ans. Br. at 30, 34). That arbitration decision is irrelevant (and has been nullified by the current CBA's disclaimer of prior arbitration decisions). It was rendered under a prior agreement, which has long since expired and which contained different vacation benefits provisions. It also dealt with employees who had been laid off, rather than striking employees. Thus, as detailed in DRC's Brief in Support of its Exceptions (*see* p. 29, 31 & n. 134, 32), this arbitration does not and cannot support the GC's argument or the ALJ's conclusion.

⁴⁰ 326 NLRB 522 (1998).

⁴¹ 353 NLRB No. 117 (Mar. 26, 2009).

⁴² *KSM Indus.*, which cites *Alaska Pulp*, is distinguishable from the instant case for many of the same reasons and does not support the recommended Remedy. Like *Alaska Pulp*, and unlike the instant case, *KSM Indus.* involved a Section 8(a)(3) violation, not a Section 8(a)(5) violation. Specifically, the Board had determined that the employer there had discriminatorily failed and refused to recall strikers. *See* 353 NLRB at p. 3. There is no allegation or finding here that DRC applied its recall procedure discriminatorily to delay or to refuse reinstatement to any striking employee. Further, *KSM Indus.* involved a game-changing difference – the reinstatement rights of ULP strikers, not economic strikers as here. *See id.* at p. 1 ("The issues in this compliance-stage proceeding center on backpay owed to unfair labor practice strikers who were unlawfully denied recall by the Respondent or whose recall was unlawfully delayed...").

⁴³ *See* GC's Ans. Br. at 36.

Crossovers. Further, the GC himself fails to explain how the alleged preferential treatment accorded 13 Crossovers “infected” the implemented recall procedure – perhaps because there is no allegation or finding here that anyone was unlawfully denied reinstatement or had their reinstatement delayed.⁴⁴

II. CONCLUSION

The Respondent, Dresser-Rand Company, requests that its exceptions be sustained, the ALJ’s findings and conclusions be reversed, the Complaint lodged against it be dismissed in its entirety, and the ALJ’s recommended Remedy and Order be denied.

Dated: April 16, 2010

Respectfully submitted,

/s/ Arthur T. Carter

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⁴⁴ The GC also contends that DRC’s exceptions to the recommended Remedy and Order, including those relating to other portions of the recommended remedy (such as those to which DRC excepted because the ALJ erred in finding the underlying violations), are more appropriately saved for the compliance stage. In the event the Board agrees, DRC fully reserves any objections it has to the recommended Remedy and Order and will again lodge its objections at the compliance stage, if and when it becomes necessary.

CERTIFICATE OF SERVICE

This is to certify that the **RESPONDENT'S BRIEF IN REPLY TO THE GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** in Case Nos. 3-CA-26543, 3-CA-26595, 3-CA-26711, and 3-CA-26943 has been filed electronically and that an original and eight copies of the Motion have been sent by certified mail, return receipt requested, to the party listed below on this 16th day of April, 2010:

Lester A. Heltzer, Executive Secretary
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Further, this same day, a copy of Respondent's Reply Brief has been sent by email and certified mail to the following:

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