

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

ALDEN LEEDS, INC.,

Respondent Employer,

and

**UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 1245,**

Charging Party.

Case: 22-CA-29188

EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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EXCEPTIONS

1. Exception is taken to the ALJ's legal determination that it is settled law that a strict notice requirement applies *not merely* to lockouts in connection with strikes *but also* to lockouts is carried out by an employer in good faith and in the absence of a strike and a subsequent return to work by the striking employees. (ALJD 16:22 to 17:51) This exception is taken in light of the fact that there is no published decision that holds a strict notice requirement is applicable to lockouts that are carried out by an employer in good faith and in the absence of a strike and a subsequent return to work by striking employees.

2. Exception is taken to the ALJ's legal determination to apply a strict notice requirement to Respondent's lockout in the absence of settled law that holds that a lockout requires notice to the union when the lockout, as here, is carried out by an employer in good faith and in the absence of a strike and a subsequent return to work by the striking employees. (ALJD 16:22 to 17:51) This exception is taken in light of the fact that: (1) there is no published decision that holds that a strict notice requirement is applicable to lockouts that are carried out by an employer in good faith and in the absence of a strike and a subsequent return to work by striking employees; and (2) to the extent that the NLRB were to establish new law with respect to a notice requirement under these circumstances, such new law, by operation of principles of fairness and equity, should be prospective only.

3. Exception is taken to the ALJ's finding that **“Respondent's October 30 email purporting to detail the terms of Respondent's offer was confusing, incomplete and internally inconsistent, and fails to provide the Union and Respondent's employees with the timely and complete notification of the terms that the employees must accept to avert the lockout.”** (ALJD 18:2 to 18:5) This exception is taken in light of the Charging Party's repeated admissions – by way of documentary evidence and testimony at the hearing by the Union representatives – that it knew and understood that Respondent was offering a one-year freeze on all terms of the Agreement (including the cost of employee health benefits), and that Respondent's negotiating position remained unchanged throughout the entire period of negotiations leading up to, and including, the lockout of November 3, 2009

4. Exception is taken to the ALJ's finding that **“Respondent's position on health care cannot be readily determined.”** (ALJD 40:1) This exception is taken in light of the Charging Party's repeated admissions – by way of documentary evidence and testimony at the hearing by the Union representatives – that it knew and understood that Respondent was offering a one-year freeze on all terms of the Agreement (including the cost of employee health benefits), and that Respondent's negotiating position remained unchanged throughout the entire period of negotiations leading up to, and

including, the lockout of November 3, 2009

5. Exception is taken to the ALJ's finding that "**[Respondent's October 30] proposal is on its face ... clearly different from the one-year freeze offered in prior sessions.**" (ALJD18:44 to 18:45) This exception is taken in light of the Charging Party's repeated admissions – by way of documentary evidence and testimony at the hearing by the Union representatives – that it knew and understood that Respondent was offering a one-year freeze on all terms of the Agreement (including the cost of employee health benefits), and that Respondent's negotiating position remained unchanged throughout the entire period of negotiations leading up to, and including, the lockout of November 3, 2009

6. Exception is taken to the ALJ's finding that "**it is ... uncertain if Respondent was still proposing any of its alternative plans, particularly the plan for single coverage, which could result in reduced costs for Respondent, thereby less than a total "freeze" previously offered, or if it was accepting the Union's proposal to freeze contributions for one year with a possible reduction in benefits.**" (ALJD 19:3 to 19:7) This exception is taken in light of the Charging Party's repeated admissions – by way of documentary evidence and testimony at the hearing by the Union representatives – that it knew and understood that Respondent was offering a one-year freeze on all terms of the Agreement (including the cost of employee health benefits), and that Respondent's negotiating position remained unchanged throughout the entire period of negotiations leading up to, and including, the lockout of November 3, 2009

7. Exception is taken to the ALJ's finding that "**there was no agreement on the Union's health care proposal during and Epstein's email gives the impression that Respondent was still proposing various alternative plans.**" (ALJD 19:47 to 19:49) This exception is taken in light of the Charging Party's repeated admissions – by way of documentary evidence and testimony at the hearing by the Union representatives – that it knew and understood that Respondent was offering a one-year freeze on all terms of the Agreement (including the cost of employee health benefits), and that Respondent's negotiating position remained unchanged throughout the entire period of negotiations leading up to, and including, the lockout of November 3, 2009

8. Exception is taken to the ALJ's finding that "**Respondent's decision to provide the Union with only one working day's notice, in which to evaluate and understand Respondent's uncertain, ambiguous and confusing offer, vote on it and accept it, is clearly insufficient and not the 'timely' notice required by Board precedent.**" (ALJD 20:7 to 20:10) This exception is taken in light of the Charging Party's repeated admissions – by way of documentary evidence and testimony at the hearing by the Union

representatives – that it knew and understood that Respondent was offering a one-year freeze on all terms of the Agreement (including the cost of employee health benefits), and that Respondent’s negotiating position remained unchanged throughout the entire period of negotiations leading up to, and including, the lockout of November 3, 2009

9. Exception is taken to the ALJ’s finding that **“Respondent’s October 30 email presented the Union and its employees with a ‘moving target,’ ... that does not satisfy Respondent’s burden to afford the Union with a clear statement of the conditions that the employees must accept to avert the lockout and the time to intelligently evaluate these conditions.”** (ALJD 20:14 to 20:18) This exception is taken in light of the Charging Party’s repeated admissions – by way of documentary evidence and testimony at the hearing by the Union representatives – that it knew and understood that Respondent was offering a one-year freeze on all terms of the Agreement (including the cost of employee health benefits), and that Respondent’s negotiating position remained unchanged throughout the entire period of negotiations leading up to, and including, the lockout of November 3, 2009

10. Exception is taken to the ALJ’s finding that **“the first complete proposal submitted by Respondent to the Union was at the November 9 meeting and was after the employees had been locked out for nearly a week. This offer cannot cure the Respondent’s failure to provide such an offer prior to the lockout.”** (ALJD 20:21 to 20:24) This exception is taken in light of the Charging Party’s repeated admissions – by way of documentary evidence and testimony at the hearing by the Union representatives – that it knew and understood that Respondent was offering a one-year freeze on all terms of the Agreement (including the cost of employee health benefits), and that Respondent’s negotiating position remained unchanged throughout the entire period of negotiations leading up to, and including, the lockout of November 3, 2009

11. Exception is taken to the ALJ’s finding that the Union negotiated in good faith throughout the weeks leading up to the lockout. This exception is taken in light of the undisputed evidence in the record that: (1) Respondent agreed to a 30-day extension of the Agreement and repeatedly indicated its willingness to engage in negotiations for a new agreement in the weeks leading up to the lockout but the Union failed and refused to negotiate with Respondent during this entire period, except for two brief sessions in 30 days; (2) Respondent sent numerous communications to the Union during this critical period to which the Union did not even bother to respond.

12. Exception is taken to ALJ’s crediting of the hearing testimony of Union President Vincent DeVito with respect to the circumstances and events leading to the November 3, 2009 lockout. This exception is taken in light of

numerous demonstrable inconsistencies and falsehoods contained in DeVito's hearing testimony, including DeVito's sworn testimony that: (1) he needed to confer with counsel just prior to the lockout but was unable to reach counsel, a statement refuted by the sworn testimony at the hearing by DeVito's direct subordinate, John Tricoli, the Union's Secretary-Treasurer; and (2) he was never previously involved in an employer lockout, notwithstanding that, in fact, DiVito was personally involved in a prior lockout with the very same employer.

13. Exception is taken to ALJ's crediting of the hearing testimony of Union Officers John Tricoli and Tom Cunningham with respect to the circumstances and events leading to the November 3, 2009 lockout. This exception is taken in light of the of the critical sworn statements of Tricoli and Cunningham in support of the Charging Parties' remaining claims against Respondent, *all of which were rejected by the ALJ in their entirety.*

Respectfully Submitted,
Sokol Behot and Fiorenzo
Attorneys for Respondent Alden Leeds, Inc.

By: /s/ Joseph B. Fiorenzo
Joseph B. Fiorenzo

Dated: October 11, 2010