UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

		X		
ALDEN LEEDS, INC.		:		
-and-	Respondent,	: :		
UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1245		: : :	Case No.	22-CA-29188
(Charging Party.	:		
		: X		

CHARGING PARTY UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 1245's MOTION TO STRIKE RESPONDENT'S EXCEPTIONS # 11, 12, AND 13 AND PORTIONS OF RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS

On October 11, 2010, Respondent filed Exceptions and a Brief in Support of Exceptions to the Administrative Law Judge's decision, dated August 30, 2010. Charging Party hereby moves to strike Exceptions 11, 12 and 13, and corresponding portions of Respondent's brief because they do not comply with the Board's Rules and Regulations Section 102.46 governing exceptions and answering briefs.

- 1. Charging Party moves to strike Exception 11 and its supporting argument at Point III of Respondent's brief because they run afoul of Section 102.46(b) and (c) of the Board's Rules and Regulations. The Exception reads as follows:
 - 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.

Respondent's Exceptions at 4.

In contravention of Rule 102.46(b) and 102.46(c), Exception 11 and its supporting argument neither include citations to the ALJ's decision nor relate to issues before the Board. Rather, Exception 11 is a gratuitous attack on the Union, wholly unsupported by the record, suggesting that the Union did not bargain in good faith in the weeks leading up to the lockout. R. Br. at 44-45. The complaint does not allege that the Union did not bargain in good faith. Indeed, Respondent admits that its argument is not necessary to the resolution of the issues before the Board. R. Br. at 44. Respondent seeks to prejudice the Union in the eyes of the Board. As such, Exception 11 is improper. Further, review of this Exception and its supporting argument needlessly burdens Charging Party and the Board. Therefore, the Exception and supporting argument must be struck.

- 2. Similarly, Charging Party moves to strike Exceptions 12 and 13 and their supporting arguments at Point IV of Respondent's brief because they run afoul of Section 102.46(b) and (c) of the Board's Rules and Regulations. The Exceptions read as follows:
 - 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 Tricolli (sic), the Union's Secretary-Treasurer; and (2) he was never previously involved in an employer lockout, notwithstanding

that, in fact, DeVito was personally involved in a prior lockout with the very same employer.

Respondent's Exceptions at 4-5.

13. Exception is taken to ALJ's crediting of the hearing testimony of Union Officers John Tricolli (sic) 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 critical sworn statements of Tricolli (sic) and Cunningham in support of the Charging Parties' remaining claims against Respondent, *all of which were rejected by the ALJ in their entirety*.

Respondent's Exceptions at 5. (Emphasis in original).

These Exceptions challenge the ALJ's credibility determinations with regard to the testimony of DeVito, Cunningham and Troccoli. In contravention of Rule 102.46(b)

Respondent has not cited to any specific finding by the ALJ. It is impossible to decipher which testimony Respondent seeks to challenge. Respondent's supporting arguments, similarly, do not contain citations to portions of the Judge's findings to which Respondent excepts. R. Br. at 46-50. Respondent readily admits that these arguments do not address issues before the Board, R. Br. at 50, and, therefore, violate Rule 102.46(c). Rather, Respondent seeks to underscore that the ALJ did not credit certain portions of Troccoli's and Cunningham's testimony. As these portions of testimony do not relate to violations pending before the Board, and Respondent has not excepted to specific credibility resolutions that are relevant, Respondent's argument is beyond the scope of exceptions and extraneous.

Further, Respondent's argument is replete with misstatements of both the ALJ's decision and of the record. For example, Respondent falsely claims that the ALJ credited Epstein over Charging Party's witnesses regarding the alleged threat to move the work to Oklahoma. R. Br. at 49. This is simply not true. The ALJ explicitly credited the Union witnesses, but did not find a violation as a matter of law. See ALJD 7:17-23; 15:4-14; 21:1-26. Thus, Exceptions 12 and 13

are irrelevant to the issues before the Board and improperly pled. Respondent's supporting

arguments mischaracterize the record and the Judge's decision and attempt to undermine the

Union's case without citations to the record to which Charging Party can respond. The

Exceptions and their supporting arguments are improper, needlessly burden Charging Party and

the Board, and must be struck.

3. Charging Party also moves to strike all references in Respondent's Brief in

Support of Exceptions to a telephone conversation on October 26 between Epstein, Troccoli and

Cunningham. The ALJ explicitly found that this telephone conversation occurred on October 30

between Epstein and Troccoli. The ALJ discredited Epstein's testimony that it occurred earlier.

ALJD 9:49-10:12 Respondent relies on the October 26 date to argue in Point II F that the Union

had sufficient notice of the lockout. R. Br. at 42-43. Because Respondent did not file

Exceptions to this finding of fact, we move to strike all references to this conversation occurring

on October 26.

For the reasons outlined above, Charging Party respectfully requests that its motion to

strike Respondent's Exceptions 11, 12 and 13 and portions of its supporting brief be stricken as

set forth above.

Respectfully submitted,

/s/ Jessica Ochs

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Motion To Strike Respondent's Exceptions #11, 12, and 13 and Portions of Respondent's Brief In Support of Exceptions of United Food and Commercial Workers Union Local 1245 to be e-filed with the NLRB and served by e-mail upon:

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this 5th day of November, 2010.

/s/ Jessica Ochs
Jessica Drangel Ochs