

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

AMPERSAND PUBLISHING, LLC
d/b/a SANTA BARBARA NEWS-PRESS

	Cases	31-CA-28589
		31-CA-28661
		31-CA-28667
		31-CA-28700
		31-CA-28733
		31-CA-28734
and		31-CA-28738
		31-CA-28799
		31-CA-28889
		31-CA-28890
		31-CA-28944
		31-CA-29032
		31-CA-29076
		31-CA-29099
		31-CA-29124

GRAPHIC COMMUNICATIONS CONFERENCE,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

**REPLY BRIEF OF COUNSEL FOR THE GENERAL COUNSEL TO THE
ANSWERING BRIEF OF *SANTA BARBARA NEWS-PRESS* TO THE
GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

Submitted by:
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Pursuant to Section 102.46 of the Board’s Rules and Regulations, Counsel for the General Counsel respectfully files the following reply brief in response to Respondent’s Answering Brief to Counsel for the General Counsel’s Cross-Exceptions and Brief in support thereof.

I. PROCEDURAL HISTORY

On November 30, 2010, Counsel for the General Counsel filed Cross-Exceptions and its Brief in support of its Cross-Exceptions. On December 16, 2010, Respondent filed its Answering Brief to Counsel for the General Counsel’s Cross-Exceptions (“Answering Brief”).¹

II. DISCUSSION

A. THE ALLEGATION THAT RICHARD MINEARDS’ LAYOFF VIOLATED SECTION 8(A)(3) WAS PROPERLY PLED AND LITIGATED

Respondent asserts in its Answering Brief that “[t]he General Counsel, for the first time in its cross-exceptions, advanced a completely new—and unlitigated—legal theory with respect to Mineards’ layoff.” (AB 3). Respondent asserts that “[a] complaint cannot be expanded beyond its allegations.” (AB 4). Paragraph 14(b) of the Amended Consolidated Complaint (“the Complaint”) alleged that Respondent laid

¹ References to the decision of the ALJ will be cited as “ALJD” followed by the appropriate page number from his decision. References to the transcript will be cited as “Tr.” followed by the appropriate page. References to Respondent’s Answering Brief will be cited as “AB,” followed by the appropriate page number. References to Counsel for the General Counsel’s post-hearing brief will be cited as “GC Br,” followed by the appropriate page number.

off Richard Mineards while paragraph 24 of the Complaint alleged that Respondent violated Section 8(a)(3) by, *inter alia*, laying off Richard Mineards.

Section 102.15(b) of the Board's Rules and Regulations requires that a complaint contain "a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." In applying Section 102.15 of the Board's Rules and Regulations, "the Board and the courts have consistently found that an unfair labor practice complaint is not judged by the strict standards applicable to certain pleadings in other, different legal contexts." *In re Artesia Ready Mix Concrete, Inc.*, 339 NLRB 1224, 1226 (2003). In fact,

the sole function of the complaint is to advise the respondent of the charges constituting unfair labor practices as defined in the Act, that he may have due notice and a full opportunity for hearing thereon. The Act does not require the particularity of pleading of an indictment or information, nor the elements of a cause like a declaration at law or a bill in equity. All that is requisite in a valid complaint before the Board is that there be a plain statement of the things claimed to constitute an unfair labor practice that respondent may be put upon his defense.

Id. at 1126. Thus, Counsel for the General Counsel properly pled its allegation that the layoff of Mineards violated Section 8(a)(3).

As to Respondent's assertion that it was unaware of Counsel for the General Counsel's theory that Mineards' layoff violated Section 8(a)(3) and was in furtherance of Respondent's attempts to undermine employee support for the Union, Counsel for the General Counsel announced, in his opening statement, that "the evidence will show that Respondent, at every turn, set to undermine the Union's

status as the representative of the news employees.” (Tr. 27:4-6.) Thus, at the first day of hearing, Respondent was on notice that Counsel for the General Counsel’s overarching theory of this case was that Respondent was attempting to undermine the Union’s status. Moreover, Counsel for the General Counsel, in its post-hearing brief, argued that

Respondent’s layoff of Mineards violated Section 8(a)(3) in addition to Section 8(a)(5) as Respondent’s layoff of Mineards and subsequent requests that Mineards continue to write his column for Respondent as an independent contractor was a thinly-veiled attempt to further dilute the unit and weaken the Union. Notably this attempt to move work out of the unit was taken in concert with Respondent’s ongoing unlawful use of temporary agency-provided employees to perform unit work.

(GC Br 99.) Thus, Respondent is mistaken in his contention that the “General Counsel did not allege or litigate this theory now presented in the Exceptions.” (AB 4.) Rather, Counsel for the General Counsel properly pled the allegation in the Complaint, adduced the evidence it deemed necessary at hearing, and then argued the violation in its post-hearing brief, applying relevant case law to the factual record. Based on the above, Respondent’s argument that the theory that Mineards’ layoff sought to undermine the unit should be disregarded.

B. RESPONDENT’S CITATION TO *COASTAL ELEC. COOPERATIVE, INC.*, IS INAPPOSITE

Respondent, in its Answering Brief, repeatedly cites to *Coastal Elec.*

Cooperative, Inc., 311 NLRB 1126 (1993), in support of its argument that its various proposals were lawful and not predictably unacceptable. Respondent asserts that “[t]he facts in *Coastal Elec. Cooperative, Inc.*, are analogous to the facts in the instant

case.” (AB 25.) Respondent also asserts that *Coastal Elec.* “reflects more current Board law” than *Hydrotherm*, a case cited by Counsel for the General Counsel and relied upon by the Administrative Law Judge in his decision. (AB 25.)

Despite Respondent’s assertions to the contrary, *Coastal Elec.* is inapposite to the instant matter. In *Coastal Elec.*, the Board reversed the Administrative Law Judge’s finding that the respondent’s bargaining violated the Act. The Board found that,

Respondent’s various positions, although indicative of hard bargaining are not inherently unlawful, and its failure to make concession, in the absence of other indicia of bad faith, is not a sufficient manifestation of bargaining with intent to avoid agreement.

Coastal Elec. at 1127. In so finding, the Board relied on evidence that

Respondent complied with the Union’s information requests . . . reached agreement on numerous proposals, sometimes after making concessions to address the Union’s concerns . . [and] there [was] no evidence of animus or conduct away from the bargaining table establishing an intent by [r]espondent to frustrate agreement.

Coastal Elec. at 1127. In the instant case, Counsel for the General Counsel alleged and the ALJ properly concluded that Respondent unlawfully delayed in responding to the Union’s information requests, exhibited anti-union animus, and engaged in varied away from the table conduct evidencing an intent to frustrate agreement. Thus, Respondent’s citations to *Coastal Elec.* are misplaced and should be disregarded.

III. CONCLUSION

In conclusion, Counsel for the General Counsel submits that the ALJ's well-reasoned and legally-sound decision and order should be adopted in its entirety, except as set forth in Counsel for the General Counsel's Cross-Exceptions.

Dated at Los Angeles, California, this 28th day of December, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven Wyllie", written over a horizontal line.

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Re: Ampersand Publishing, LLC, dba Santa Barbara News-Press
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CERTIFICATE OF SERVICE

I hereby certify that I served the attached **REPLY BRIEF OF COUNSEL FOR THE GENERAL COUNSEL TO THE ANSWERING BRIEF OF SANTA BARBARA NEWS-PRESS TO THE GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** on the parties listed below, on the 28th day of December, 2010.

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