UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DAYCON PRODUCTS COMPANY, INC. Respondent, And DRIVERS, CHAUFFEURS AND HELPERS LOCAL UNION NO. 639 A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS Charging Party.	)	Case Nos.: 5-CA-35738 5-CA-35687 5-CA-35965 5-CA-35994

CHARGING PARTY'S CONSOLIDATED OPPOSITION TO MOTIONS TO REOPEN THE RECORD AND FOR EXPLANATION

Pursuant to the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), Charging Party, Drivers, Chauffeurs and Helpers Local Union No. 639, affiliated with International Brotherhood of Teamsters ("the Union" or "Local 639"), by its attorneys, Mooney, Green, Saindon, Murphy & Welch, P.C., hereby files its consolidated opposition to Respondent Daycon Products Company, Inc.'s ("Daycon") Motion to Reopen Record and its Motion for Explanation. As briefly set forth below, each motion is without merit and should be denied.

In its Motion to Reopen Record and Include 10(J) Transcript, Daycon suggests that somehow the transcript of the injunction proceedings before the United States District Court for the District of Maryland warrants inclusion in this matter. In support of its submission, Daycon asserts that the testimony provided at that hearing is inconsistent with the testimony adduced at the unfair labor practice trial conducted in November 2010 and, if such testimony had been

available, a different result would have obtained in that proceeding. In the first instance, there is no material inconsistency between the testimony at both proceedings. A review of the trial transcript, as well as the injunction transcript, demonstrates that Local 639 has consistently, since the inception of the strike on April 26, 2010, stated that the strike was called to protest the illegally declared impasse of April 22, 2010 and the unlawful unilateral imposition of the Respondent's final offer on April 23, 2010. In addition, the Union has consistently taken the position that Daycon violated the Act when it failed to reinstate strikers who made an unconditional offer to return in early July 2010. Finally, Local 639 has consistently demanded the rescission of Daycon's unlawful bargaining actions and the reinstatement of the unfair labor practice strikers. This was the Union's position at the November 2010 trial and it was consistent with the testimony offered by Union witnesses at the February 2011 hearing in federal court. There simply is no new evidence or revelation to be discerned from the testimony before the federal court and inclusion of this material would in no way change the ruling made by the Administrative Law Judge. Moreover, Respondent had a full and complete opportunity to pursue any and all lines of questioning regarding the unfair labor practice strike and bargaining at the November 2010 trial. Indeed, Union Representative Doug Webber, whose federal court testimony Daycon now seeks to include in the record, was extensively questioned by Respondent's counsel at that trial. It is too late in the day for the Respondent to attempt to relitigate the unfair labor practice trial and the motion to reopen the record should be denied.

In its almost hysterical Motion for Explanation to Avoid Appearance of Prejudgment or Bias, Etc., Daycon enters the realm of Alice in Wonderland. In apparent pursuit of the litigation maxim that "if you don't have favorable facts, argue the law; if you don't have favorable law, argue the facts and, if you have neither, blame the court," Daycon suggests that a press release

issued after the rendering of the Administrative Law Judge's Decision reflects some sinister antagonistic predisposition by the Board. We can only surmise that the submission is intended for another audience for it lacks any basis in applicable law. In a document replete with unsupported and cynical suggestions of impropriety, Daycon demands that the Board provide some explanation to Respondent concerning the press release. Putting aside the paranoia embedded in the motion, the relief sought is simply unwarranted, inappropriate and silly. Although Daycon may wish that it warrants such singular attention by a federal agency, its delusional perceptions of significance are misplaced. Indeed, this case presents a fairly straightforward, traditional unfair labor practice case. There is nothing novel or noteworthy about the facts or legal theories involved. The Administrative Law Judge's Ruling is not groundbreaking, inconsistent with extant precedent or in any way revolutionary. Despite its great significance to the Union and the discriminatees who have suffered for almost one year by reason of the illegal conduct, the case is indistinguishable from a host of other NLRB cases involving unfair labor strikes and illegal bargaining. The Board will consider this case, as every other case, on the merits of the legal arguments and factual contentions. Daycon will get the same consideration as every other litigant, no more and no less. If Daycon possesses any evidence supporting its allegations of impropriety, it should submit that information on the record. If, as we suspect, it does not; it should withdraw its motion.

In view of the above, we respectfully request that both motions be denied.

Respectfully submitted,

/s/

John R. Mooney
MOONEY, GREEN, SAINDON,
MURPHY & WELCH, P.C.
1920 L Street, NW, Suite 400
Washington, DC 20036
(202) 783-0010 *telephone*
(202) 783-0068 *facsimile*
jmooney@mooneygreen.com

Counsel for Local Union No. 639

Dated: March 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that on the 21st of March, 2011, I caused a true and correct copy of the Charging Party's Consolidated Opposition to Motions to Reopen the Record and for Explanation to be served via electronic mail upon the following:

Daniel M. Heltzer, Esq.
Sean R. Marshall, Esq.
Crystal S. Carey, Esq.
Counsel for the Acting General Counsel
1099 14th Street, NW, Fifth Floor
Washington, DC 20570
daniel. heltzer@nlrb.gov

Mark M. Trapp, Esq.
Counsel for Respondent
Epstein, Becker & Green, P.C.
150 North Michigan Ave., 35th Floor
Chicago, IL 60601
mtrapp@ebglaw.com

Paul Rosenberg, Esq.
Counsel for Respondent
Epstein, Becker & Green, P.C.
1227 25th Street, NW, Suite 700
Washington, DC 20005
prosenberg@ebglaw.com

Jay P. Krupin, Esq.
Counsel for Respondent
Epstein, Becker & Green, P.C.
1227 25th Street, NW
Washington, DC 20005
jpkrupin@ebglaw.com

/s/
John R. Mooney

Counsel for Teamsters Local Union No. 639