UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MIDWESTERN PERSONNEL SERVICES, INC
and TRANSPORT LABOR
CONTRACT/LEASING, INC., A Single
Employer
and

Cases 25-CA-25503-2
25-CA-25823-3
25-CA-25978-5

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 215, a/w INTERNATIONAL
BROTHERHOOD OF CHAUFFEURS, TEAMSTERS,
WAREHOUSEMEN AND HELPERS OF AMERICA

ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF LIMITED CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Comes now Counsel for the Acting General Counsel and respectfully submits this Brief in Support of Limited Cross-Exceptions to the Decision of the Administrative Law Judge. The Acting General Counsel does not except to the Administrative Law Judge's ultimate holding in this matter or to his proposed order. Rather, the Acting General Counsel excepts to certain of the Administrative Law Judge's factual findings and his failure to find certain, uncontradicted facts. It is the Acting General Counsel's position that these facts are necessary for the Board to make an appropriate decision in this matter and are referenced in the General Counsel's Answering Brief to Respondent's Exceptions.

I. ANALYSIS

1. Exception 1

The Acting General Counsel excepts to the Administrative Law Judge's failure to find that on January 27, 2000 the board of directors of Transport Labor Contract/ Leasing, Inc. (herein "TLCL") dissolved Associated Companies, Inc., the former parent company of Midwestern Personnel Services, Inc. (herein "MPS"), and made MPS a direct subsidiary of TLCL. This fact is found in G.C. Ex. # 2, which are minutes of meeting for the Board of TLCL. Timothy J. Coughlin, TLCL's Chief Executive Officer, also testified to the accuracy of the above facts. (TR 27-28). This testimony was uncontradicted and thus does not involve any issue of credibility.

2. Exception 2

The Acting General Counsel excepts to the Administrative Law Judge's finding on page 3, line 9 of his decision that MPS has had no internal employees since 2003. This statement of facts by the Administrative Law Judge is incorrect. William Benson, TLCL's Chief Financial Officer/Treasurer, testified that beginning in 2000 MPS did not have any internal employees. (TR 72). This testimony was uncontradicted and thus does not involve any issue of credibility.

3. Exception 3

The Acting General Counsel excepts to the Administrative Law Judge's failure to find that MPS has had no internal employees since 2000. William Benson, TLCL's Chief Financial Officer/Treasurer, testified that beginning in 2000 MPS did not have any internal employees. (TR 72). This testimony was uncontradicted and thus does not involve any issue of credibility.

4. Exception 4

The Acting General Counsel excepts to the Administrative Law Judge's failure to find that since 2000 all work performed for customers of MPS was performed by employees of other subsidiaries of TLCL. Timothy J. Coughlin, TLCL's Chief Executive Officer, testified that beginning in 2000 any work performed for customers of MPS was performed by employees of other TLCL employees. (TR 36). This testimony was uncontradicted and thus does not involve any issue of credibility.

5. Exception 5

The Acting General Counsel excepts to the Administrative Law Judge's failure to find that TLCL's other subsidiaries performed this work for MPS customers without remuneration from MPS or any type of contract with MPS. William Benson, TLCL's Chief Financial Officer/Treasurer, testified that there was no exchange of money between MPS and the other subsidiaries as well as no contracts. (TR 75-76). This testimony was uncontradicted and thus does not involve any issue of credibility

6. Exception 6

The Acting General Counsel excepts to the Administrative Law Judge's failure to find that beginning in 2000 all revenues generated by MPS were regularly swept into a bank account controlled by TLCL. William Benson, TLCL's Chief Financial Officer/Treasurer, testified that all money in the bank account of MPS was swept into a bank account under the control of TLCL. (TR 75). This testimony was uncontradicted and thus does not involve any issue of credibility.

7. Exception 7

The Acting General Counsel excepts to failure of the Administrative Law Judge to find that the bank account belonging to MPS was under the oversight of the Chief Financial Officer of TLCL. William Benson, TLCL's Chief Financial Officer/Treasurer, testified that all money in the bank account of MPS was under the oversight of TLCL's Chief Financial Officer. (TR 75). This testimony was uncontradicted and thus does not involve any issue of credibility.

8) Exception 8

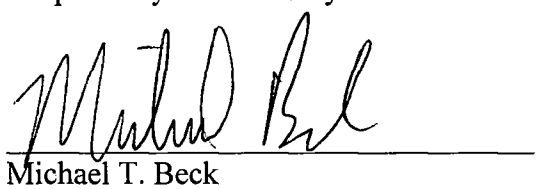
The Acting General Counsel excepts to the Administrative Law Judge's failure to find that beginning in 2000 TLCL decided to stop marketing MPS to new customers. William Benson, TLCL's Chief Financial Officer/Treasurer, testified that beginning in 2000 TLCL decided to stop marketing MPS to new customers. (TR 76-77). This testimony was uncontradicted and thus does not involve any issue of credibility.

II. CONCLUSION

For the reasons set forth above, the Acting General Counsel respectfully requests its cross-exceptions be granted and that the Board make the appropriate Findings of Fact in this matter.

Signed in Indianapolis, Indiana this 6th day of September 2011.

Respectfully submitted by:



Michael T. Beck
Counsel for Acting General Counsel
National Labor Relations Board
Region Twenty-five
Room 238
Minton-Capehart Federal Building
575 North Pennsylvania Street
Indianapolis, Indiana 46204