

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

THE AMERICAN BOTTLING COMPANY, INC.,  
d/b/a DR. PEPPER SNAPPLE GROUP,  
Respondent,

and

Case No. 8-CA-39327

TEAMSTERS LOCAL UNION NO. 293 a/w  
THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, Charging Party,  
and

TEAMSTERS LOCAL UNION NO. 348 a/w  
THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, Intervenor-Party to Contract,  
and

TEAMSTERS LOCAL UNION NO. 1164 a/w  
THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, (Party in Interest).

**EXCEPTIONS TO ALJ DECISION ON BEHALF OF  
INTERVENOR TEAMSTERS LOCAL UNION NO. 348**

Intervenor Teamsters Local Union No. 348, pursuant to Section 102.46(b)(1) of the Board's Rules and Regulations, files the following exceptions to the August 12, 2011 recommended decision<sup>1</sup> of Administrative Law Judge Jeffrey D. Wedekind in the above referenced case. The accompanying brief of Intervenor Teamsters Local Union No. 348 is filed in support of these Exceptions pursuant to Section 102.46(c) of the Board's Rules and Regulations.

**STATEMENT OF THE CASE**

1. ALJD at 2:26-27. The ALJ's finding that the Respondent violated the Act.

---

<sup>1</sup> Citations to the administrative law judge decision ("ALJD") are by page and line in the following format: ALJD [page number]:[line number]. The headings in these exceptions refer to the headings used in the ALJD.

## **FINDINGS OF FACT; II. ALLEGED UNFAIR LABOR PRACTICES; A. Background**

2. ALJD at 3:12-19. The ALJ's finding that Respondent's "decision in late 2010" was to "consolidate its operations and employees at [Akron and Maple Heights] into a new facility in Twinsburg" and to the finding that "[t]he decision created a problem because, not only were many of the employees represented, they were represented by three different Teamsters locals."
3. ALJD at 3:21-25. The ALJ's finding that "certain employee classifications that were included in the unit at Akron were not included in either of the units at Maple Heights, and vice versa" and the example listed therein, including that the "transport drivers" employee classification was "excluded from the unit at Akron".
4. ALJD at 3:24-25, footnote 4. The ALJ's finding that a preponderance of the credible evidence indicates that "advance sales representatives" and "account managers" are essentially the same position and performed the same or similar functions at Maple Heights and Akron, to the finding that Respondent used the terms interchangeably and to the ALJ's creation of and reference to the extra contractual classification of "sales/account managers" throughout the decision.
5. ALJD at 3, footnote 5. The ALJ's finding that discrepancies in the number of employees in each classification are contained in the record and the finding that such discrepancies "are small and would not effect [sic] the ultimate result."
6. ALJD at 4:5-18. The ALJ's "chart" referencing Akron and Maple Heights employee classifications which fails to accurately display the record evidence.

7. ALJD at 4:19-20 The ALJ's finding that "there were obviously some significant labor relations issues for the Respondent to deal with as a result of its decision."
8. ALJD at 5:14 The ALJ's finding that the merchandisers at Akron were "unrepresented".
9. ALJD at 5:22-24 and footnote 7. The ALJ's finding that "Local 293 objected to excluding the Maple Heights sales/account managers from the proposed unit, and to otherwise 'mirroring' the Akron contract" and to the findings regarding 2005 and 2008 contract negotiations between Respondent and Local 293.
10. ALJD at 5:24-26. The ALJ's failure to find that Local 348 contended, in addition to the contractual provisions of Article XIV of the June 1, 2008 to May 31, 2012 collective bargaining agreement, that all of the bargaining unit employees at Akron were to be transferred to Twinsburg, that the operations would remain unchanged after the proposed relocation to Twinsburg, and that Local 348 would be the majority representative of all bargaining unit classifications proposed at the relocated Twinsburg facility, and therefore Respondent was prohibited from engaging in its "non-union" alternative .
11. ALJD at 5:28-29. The ALJ's finding that "[n]or did any of the locals disclaim interest at that time."
12. ALJD at 6:5-6. The ALJ's finding that [t]he locals thereafter were unable initially to agree among themselves which would represent the employees at the new facility."
13. ALJD at 6:23-25. The ALJ's finding that Respondent at the December 13 meeting reiterated that it would not voluntarily agree to include "the sales/account managers" in the Twinsburg unit, and that "no agreement was reached".

14. ALJD at 6:23-25. The ALJ's failure to find that Respondent, Local 348 and Local 293 all agreed at the December 13<sup>th</sup> meeting that the twelve (12) employees in the "account manager combination" classification, then assigned to Akron, would be excluded from any relocated collective bargaining agreement at Twinsburg.
15. ALJD at 6:33-34. The ALJ's finding that it was "[m]ost significant" that "the sales/account managers continued to be excluded from the unit."
16. ALJD at 7:22-23. The ALJ's finding that "Local 293 suggested that a separate vote could be held among the union and nonunion sales/account managers."
17. ALJD at 7:29-30. The ALJ's finding that "there was also no resolution of the 'jurisdictional dispute' that had been filed by Locals 293 and 1164 with the Joint Council."
18. ALJD at 7:35-38. The ALJ's finding that "Local 348 assured Local 293 that, if it withdrew its request from the Joint Council, Local 348 would continue to 'fight the fight' to get all of the Maple Heights unit employees covered, including the sales/account managers, and to maintain their current wages and benefits."
19. ALJD at 7:40-45. The ALJ's finding that the issuance of the January 6, 2011 letters from Local 293 and Local 1164, "dropping the jurisdictional claim on the Twinsburg location", was conditioned on the ultimate recognition by Respondent of employees in the transferred "sales/account representatives" classification under a collective bargaining agreement with Local 348 at Twinsburg.
20. ALJD at 8:30-33. The ALJ's finding that "Local 293 advised the Respondent that it would hold a union meeting that evening to determine whether the Maple Heights

sales/account managers wanted out”, and to the finding that “if they did, Local 293 would not challenge their exclusion from the Twinsburg unit”.

- 21.** ALJD at 9:33-40. The ALJ’s finding that the effective dates of collective bargaining agreement between Respondent and Local 348 for the relocated Twinsburg bargaining unit were January 14, 2011 through May 31, 2012, and the ALJ’s failure to find that the agreement reached on January 14, 2011 was an amendment to the then-existing collective bargaining agreement between Respondent and Local 348 for the term June 1, 2008 through May 31, 2012.
- 22.** ALJD at 10:14-15. The ALJ’s finding that Local 348 “pressed the Respondent to execute the contract without a prior showing that a majority of the employees in the unit had signed cards for Local 348”, and the ALJ’s failure to find that Local 348 advised Respondent that it represented the majority of employees in the classifications of employees recognized at the relocated Twinsburg facility.
- 23.** ALJD at 10:17-19. The ALJ’s finding that Respondent’s representatives advised Local 348 that “the union would still need to show majority status.”
- 24.** ALJD at 11: 26. The ALJ’s inferential finding that Local 348’s meeting with employees in the merchandiser classifications at the Twinsburg facility on January 19<sup>th</sup> “proved successful” and that Local 348’s actions at this meeting were not otherwise lawful.
- 25.** ALJD at 12: footnote 19. The ALJ’s finding that there is insufficient reliable evidence to determine whether the Respondent applied the terms and conditions set forth in the January 14<sup>th</sup> amendment to the Local 348 contract to the bargaining unit employees during the first week of the relocated operations at Twinsburg.

26. ALJD at 12: footnote 20. The ALJ's finding that the petition in Case 8-RC-17064 is valid where the petition is untimely filed on February 24, 2011, outside of the established window period of the June 1, 2008 to May 31, 2012 collective bargaining agreement between Respondent and Teamsters Local Union No. 348, and the petition seeks a unit that differs in description from the bargaining unit recognized under the collective bargaining agreement.

27. ALJD at 12: footnote 20. The ALJ's finding that the stay issued on February 3, 2011 by the Teamsters Joint Council in the jurisdictional dispute between Local 293, Local 1164 and Local 348, relates to the petition in Case 8-RC-17064 filed February 24, 2011 by Local 293 and Local 1164.

**FINDINGS OF FACT; II. ALLEGED UNFAIR LABOR PRACTICES;  
B. Analysis; 2. The alleged 8(a)(2) recognition of Local 348 on January 14.**

28. ALJD at 14:22-23. The ALJ's finding that the Respondent and Intervenor grounds disputing the Section 8(a)(2) allegations of the Complaint lack merit, and the finding that the Respondent violated the Act as alleged.

**The Respondent's position**

29. ALJD at 14:27-34. The ALJ's finding that Respondent could not lawfully recognize Local 348 at Twinsburg without evidence that it had majority support in the unit, and the applicability of the general citation to International Ladies Garment Workers Union (Bernard-Altmann) v. NLRB, 366 U.S. 731, 738 (1961).

30. ALJD at 16:24-27. The ALJ's implied finding that Local 348 President Ziga testified that Local 348 did not "already" have a majority of the bargaining unit on January 17 and 19.

31. ALJD at 16: footnote 22. The ALJ's failure to address arguments regarding the applicability of the Board's decision in Dana Corp., 356 NLRB No. 49 (2010).

### **Local 348's position**

32. ALJD at 17:13-15 and footnote 23. The ALJ's finding that Harte & Co., 278 NLRB 947 (1986); Westwood Import Co., 251 NLRB 1213 (1980), enfd. 681 F.2d 664 (9<sup>th</sup> Cir. 1982); and Rock Bottom Stores, 312 NLRB 400 (1993), enfd. 51 F.3d 366 (2d Cir. 1995) are plainly distinguishable from the instant case, and the finding that the facts in these cases, that the employer closed only one facility and the relocated employees were represented by only one union, prevented an application of the Act in the instant case requiring the continuation of the Respondent's collective bargaining relationship with Local 348 at the relocated Twinsburg facility.

33. ALJD at 17:21-25. The ALJ's finding that, in the instant case, the facts are materially distinguishable from Harte & Co., *supra*; Westwood Import Co., *supra*; and Rock Bottom Stores, *supra*.

34. ALJD at 17:27-37. The ALJ's findings that the Board's holding in Metropolitan Teletronics, 279 NLRB 957, 960 (1986), enfd. mem. 819 F.2d 1130 (2d Cir. 1987), applied as "controlling precedent" to support finding a violation of Section 8(a)(2) on the complaint allegations in the instant case.

35. ALJD at 17:29-37. The ALJ's findings that the Board's decisions in the Section 9(a) and (c) representation cases in Boston Gas Co., 235 NLRB 1354, 1355 (1978), and Martin Marietta Refractories Co., 270 NLRB 821, 822 (1984) created a rule applicable to the instant Section 8(a)(2) unfair labor practice case, and the further finding that such

cases required a finding that Respondent violated Section 8(a)(2) of the Act in the application of the Local 348 contract to the Twinsburg facility.

- 36.** ALJD at 17:39-46. The ALJ's findings that "there is clearly reason to question Local 348's majority status at Twinsburg as of January 14", and the findings regarding calculations made in reliance on the "chart" prepared by the ALJ.
- 37.** ALJD at 17:40-42 and footnote 24. The ALJ's findings that "only 38.7 percent (57 of 147) of the employees in the negotiated unit ... had previously been represented at Akron."
- 38.** ALJD at 17:42-45. The ALJ's findings that "[o]f the remaining the remaining employees in the negotiated unit, 25 percent (37 of 147) were represented by Local 293 at Maple Heights; 9.5 percent (14 of 147) were represented by Local 1164 at Maple Heights; and 26.5 percent (39 of 147) were unrepresented at Akron or Maple Heights."
- 39.** ALJD at 17:45-46. The ALJ's finding that "the Local 348 employees from Akron did not constitute even 40 percent of the negotiated unit at the new facility."
- 40.** ALJD at 18:5-17. The ALJ's findings that "at no time did either Local 293 or Local 1164 disclaim interest, as the incumbent representatives at Maple Heights, in representing employees at the new facility."
- 41.** ALJD at 18:6-9. The ALJ's finding that the Local 293 proposal on December 13 on behalf of all three locals, designating Local 348 as the contract representative, was contingent on the sales/account managers from either Akron or Maple Heights being included in the unit.
- 42.** ALJD at 18:9-12. The ALJ's finding that Local 293's telephone calls on January 12 and 13 to Respondent and Local 348, respectively, saying that it was "going to continue

to represent our people and . . . do what we have to legally” was an effective representational claim in the Twinsburg negotiated unit.

**43.** ALJD at 18:12-13 and footnote 25. The ALJ’s findings that the Local 293 January 14 letter demanded continued recognition at Twinsburg as the representative of the transferred Maple Heights unit employees, and the findings that Local 293 was not abandoning its representational claims, where such letter expressly recognized Local 348’s contract with Respondent, and was an effective representational claim for Local 293 in the recognized Twinsburg unit.

**44.** ALJD at 18:14-17. The ALJ’s finding that Local 348 informed Local 293 that it would not honor its previous commitment to include the Maple Heights sales/account managers in any negotiated unit, where no such commitment existed.

**45.** ALJD at 18:16-17. The ALJ’s finding that the refiling of both Local 293 and Local 1164 internal union “jurisdictional” claims with the Joint Council was an effective representational claim for Local 293 or Local 348 in the recognized Twinsburg unit.

**46.** ALJD at 18:19-22. The ALJ’s finding that Article XIV of the Local 348 collective bargaining agreement with Respondent did not require or justify Respondent’s actions, that Local 348’s arguments on this clause were “unsupported” and that no evidence was offered regarding the bargaining history or prior application of that clause.

**47.** ALJD at 18:22-27. The ALJ’s findings that Article XIV of the Local 348 collective bargaining agreement with Respondent “did not trump employee representational rights protected by the Act”, citing generally Kroger Co., 219 NLRB 388 (1975) and related cases.

48. ALJD at 18:29-30. The ALJ's finding that "under the rule of Metropolitan Teletronics, the Act prohibited the Respondent in the instant circumstances from continuing to recognize Local 348 in the absence of majority status."

49. ALJD at 18:33-34. The ALJ's finding that "the Respondent violated Section 8(a)(2) of the Act as alleged by granting recognition to, and executing a contract with, Local 348 on January 14."

**FINDINGS OF FACT; II. ALLEGED UNFAIR LABOR PRACTICES;  
B. Analysis; 3. The alleged 8(a)(2) assistance to Local 348 on January 17 and 19**

50. ALJD at 18:37-40. The ALJ's finding that a preponderance of the evidence supports allegation in the complaint that the Respondent unlawfully gave Local 348's representatives access and permission to solicit authorization cards at the employee orientation meetings on January 17 and 19.

51. ALJD at 18:44-48. The ALJ's findings that the totality of the circumstances clearly supports the General Counsel's position that the Respondent's conduct crossed the line of unlawful assistance in Garner/Morrison, LLC, 356 NLRB No. 163, slip op. at 7 (2011), that employee meetings were scheduled by the Respondent on company time and all employees were required to attend, and that Respondent unlawfully granted recognition and executed a contract with Local 348 prior to the meetings.

52. ALJD at 18:48 and 19:5-7. The ALJ's findings that Respondent's area director told the employees about the contract at the first meeting on the 17<sup>th</sup>, that he also identified or introduced Local 348's principal officers at both meetings, and remained in the room on the 19<sup>th</sup> until several minutes after they passed out membership/dues-checkoff forms.

53. ALJD at 19:9-14 and footnote 26. The ALJ's findings of a similarity of circumstances in the instant case with an employer's conduct reasonably tending to coerce employees in

the selection of their bargaining representative, cited in Garner/Morrison, above, and additional cases cited therein.

**54.** ALJD at 19: footnote 26. The ALJ’s findings that “[a]lthough the cited cases do not involve the identical circumstances, read together they leave little doubt that the Respondent’s conduct here violated 8(a)(2), particularly in light of the Respondent’s prior unlawful execution of the contract with Local 348, and despite the absence of any threats by the Respondent or request for equal access by Locals 293 and 1164.”

**55.** ALJD at 19:14-15. The ALJ’s finding that “the Respondent’s conduct violated Section 8(a)(2) of the Act as alleged.”

**FINDINGS OF FACT; II. ALLEGED UNFAIR LABOR PRACTICES;  
B. Analysis; 4. The alleged 8(a)(2)/(3) deduction of Local 348 dues since February 1**

**56.** ALJD at 19:19-21. The ALJ’s finding that the complaint allegation that the Respondent has unlawfully deducted Local 348 dues from employee paychecks since February 1 pursuant to the union security provision in the January 14 contract is “well supported.”

**57.** ALJD at 19:23-27. The ALJ’s finding that “inasmuch as the January 14 contract was unlawful, it follows that the subsequent deduction of dues pursuant to the contract was also unlawful”, citing as examples, Safety Carrier, Inc., 306 NLRB 960, 972 (1992) and other cases.

**58.** ALJD at 19:27-28. The ALJ’s finding that “the Respondent violated Section 8(a)(2) and (3) of the Act, as alleged.”

**CONCLUSIONS OF LAW**

**59.** ALJD at 19:30-43. The ALJ’s conclusion of law number 1.

**60.** ALJD at 19:45-46 and 20:5-6. The ALJ’s conclusion of law number 2.

## **REMEDY**

- 61.** ALJD at 20:13-15. The ALJ's recommended remedy upon finding the Respondent engaged in unfair labor practices that it cease and desist from such conduct and to take certain affirmative action to effectuate the purposes and policies of the Act.
- 62.** ALJD at 20:15-17. The ALJ's recommended remedy for "the Respondent to withdraw and withhold recognition from Local 348 as the exclusive collective-bargaining representative of any of its Twinsburg employees unless and until the Board has certified it as such representative."
- 63.** ALJD at 20:17-22. The ALJ's recommended remedy for "the Respondent to reimburse all present and former Twinsburg employees for any and all initiation fees, dues, assessments, or other moneys paid by or withheld from them pursuant to the terms of the January 14 collective-bargaining agreement with Local 348, plus interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987), and Kentucky River Medical Center, 356 NLRB No. 8 (2010)."
- 64.** ALJD at 20:22-24. The ALJ's recommended remedy for "the Respondent to post a notice to all employees", citing J. Picini Flooring, 356 NLRB No. 9 (2010) and other cases.
- 65.** ALJD at 21: footnote 27. The ALJ's recommendation that a valid representation proceeding is pending in this matter where the locals would be entitled to receive a list of the employees' names and addresses.

66. ALJD at 21: footnote 28. The ALJ's suggested remedy that that the notice should be posted for more than the usual 60 days and/or mailed to the merchandisers.

**ORDER**

67. ALJD at 21:13-36. The ALJ's recommended Cease and Desist Order, paragraph 1. (a), (b), (c), (d).

68. ALJD at 22:5-39. The ALJ's recommended Affirmative Order, paragraph 2. (a),(b),(c),(d),(e).

69. ALJD at APPENDIX. The ALJ's recommended Notice to Employees.

For the foregoing stated exceptions, as supported by authority set forth in the accompanying brief, Intervenor Teamsters Local Union No. 348 respectfully submits that the Complaint in this case should be dismissed in its entirety.

Dated this 9th day of September, 2011:

Respectfully submitted,

/s/ James F. Wallington  
James F. Wallington (D.C. Bar # 437309)  
BAPTISTE & WILDER, P.C.  
1150 Connecticut Avenue, N.W., Suite 315  
Washington, DC 20036-4104  
Tel: (202) 223-0723/Fax: (202) 223-9677  
Email: jwallington@bapwild.com

### **Certificate of Service**

I hereby certify that on this 9th day of September, 2011, I electronically filed the foregoing paper in Case 3-CA-39327 with the Executive Secretary for the NLRB using the Board's E-File system, and served copies by email and UPS NEXT DAY DELIVERY addressed to the representatives of the parties in this matter as follows:

Counsel for the General Counsel:

Sharlee Cendrosky, Esq. and Iva Y. Choe, Esq.

National Labor Relations Board, Region 8

1240 East 9th Street, Room 1695

Cleveland, OH 44199-2086

Email: sharlee.cendrosky@nlrb.gov

Email: iva.choe@nlrb.gov

Counsel for Respondent:

Timothy C. Kamin, Esq. and Robert J. Bartel, Esq.

Krukowski & Costello

1243 N. 10th Street, Suite 250

Milwaukee, WI 53205

Email: rjb@kclegal.com

Email: tck@kclegal.com

Counsel for Teamsters Local Union No. 293 and Teamsters Local Union No. 1164:

Timothy R. Fadel, Esq.

Wuliger, Fadel & Beyer

1340 Sumner Court

Cleveland, OH 44115

Email: wfblaw@wfblaw.com

Email: tfadel@wfblaw.com

/s/ James F. Wallington