

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).

**ANSWERING BRIEF ON BEHALF OF
INTERVENOR TEAMSTERS LOCAL UNION NO. 348**

INTRODUCTION

Intervenor¹ Teamsters Local Union No. 348, pursuant to Section 102.46(d)(1) and (2) of the Board's Rules and Regulations, files this answering brief in response to the exceptions of Counsel for the Acting General Counsel to certain remedy portions of the August 12, 2011 decision² of Administrative Law Judge Jeffrey D. Wedekind in the above referenced case. The

¹ Teamsters Local Union No. 348 is an intervenor party in accordance with Sections 102.29 and 102.38 of the Board's Rules and Regulations, pursuant to the Acting Regional Director's Order Granting Intervention issued April 11, 2011 in this case.

² Citations to the administrative law judge decision ("ALJD") are by page and line in the following format: ALJD [page number]:[line number]. Citations to the record are by transcript page [Tr.], and numbered exhibits as: General Counsel Exhibits [GC Exh.], Respondent Exhibits [Resp. Exh.], Charging Party Exhibits [CP Exh.] and Intervenor Exhibits [Intvr. Exh.]. Citations to the Exceptions of Counsel for the Acting General Counsel and Brief in Support are by page in the following format: GC Exceptions Brief [page number].

ALJ rejected the requests for additional remedies of notice-reading, access and equal time to address employees. (ALJD 20-21) Counsel for the Acting General Counsel also requests a mailing of the Notice to Employees to employees in the merchandiser classification. (ALJD 21, fn.28)

Intervenor Teamsters Local Union No. 348 (“Local 348”) submits that the Acting General Counsel’s requests for special remedy are not warranted in this case and his Counsel’s Exceptions to the ALJ Decision in that regard should be overruled³.

STATEMENT OF FACTS

The Exceptions and Brief filed by Counsel for the Acting General Counsel in this case provided no citation to the facts in the record. In order to address the Acting General Counsel’s exception requests for additional, special remedies, a more detailed review of the record is required⁴. The following record citations support the factual finding of the Administrative Law Judge that the requested special remedies are not appropriate. (ALJD 20-21)

In 2010 and for many years prior, American Bottling Company, Inc. (“hereinafter “Employer” or “ABC”), referred to in the Complaint as Dr. Pepper/Snapple Group, and its predecessor companies, operated two warehouse facilities in the greater Cleveland, Ohio/Akron,

³ By exceptions and brief filed September 9, 2011, Local 348 has shown that the Employer’s continued recognition of Teamsters Local Union No. 348 as the bargaining unit representative at the relocated facility does not support findings of Section 8(a)(2) violations, or give rise to findings of any reasonable tendency to coerce employees in the selection of their bargaining representative. Because the Board has held that the Act, in similar relocation, merger and consolidation situations, “logically applies” a collective-bargaining agreement in effect at the old location to the relocated facility, no violation of Section 8(a)(3) is established by giving effect to the union security clauses of the agreement.

⁴ “The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof. It shall present clearly the points of fact and law relied on in support of the position taken on each question. Where exception has been taken to a factual finding of the administrative law judge and it is proposed to support that finding, the answering brief should specify those pages of the record which, in the view of the party filing the brief, support the administrative law judge’s finding.” 29 C.F.R. Section 102.46(d)(2)

Ohio area, from which ABC engaged in the distribution, warehousing and sales of carbonated soft drinks to area retailers and on-premise accounts. (Tr. 211; Tr. 557–561)

Teamsters Local Union No. 348 has been a party to a collective bargaining agreements with American Bottling Company, Inc. and its predecessors for more than thirty years covering a bargaining unit including drivers, bulk drivers, mechanics, merchandisers, vending personnel and warehouse workers, at a facility located at 1550 Industrial Parkway, Akron, Summit County, Ohio 44310 (“Akron facility”). (Tr. 626; 631; GC Exh. 47) The current Local 348 – ABC collective bargaining agreement is effective by its terms from June 1, 2008 to May 31, 2012. (GC Exh. 47; GC Exh. 25; Intvr. Exh. 2; Tr. 669-670; Tr. 747-748) As of January 13, 2011, the bargaining unit represented by Local 348 at the Akron facility included fifty-seven (57) employees. (GC Exh. 35; Intvr. Exh. 1; Intvr. Exh. 8, Attachment B; Tr. 483-486)

At the Akron facility, prior to January 13, 2011, the Employer also employed several non-bargaining unit employees, primarily in supervisory or management functions. (Int. Exh. 8, Attachment A.) Among those Akron non-unit classifications were twelve (12) employees performing the function of “account manager” who maintained supervisory responsibilities over the twenty-five (25) bargaining unit employees in the Akron merchandiser classification. (Tr. 560-562; Tr. 725; Compare, Intvr. Exh. 8, Attachments A. and B.)

Additionally, the Akron facility was serviced by two (2) transport drivers whose function was to operate over-the-highway tractor-trailer equipment transporting product from the ABC production facility in Columbus, Ohio to Akron on a regular basis, were on the payroll of and supervised from the Employer’s Columbus, Ohio production facility and therefore, not recognized under in the Local 348 bargaining agreement at Akron. (Tr. 345)

The other ABC facility was located at 14301 Industrial Avenue, North, Maple Heights, Cuyahoga County, Ohio 44137, at which there were two separately represented bargaining units. As of January 13, 2011, Teamsters Local 293 represented sixty-one (61) employees in a bargaining unit that included drivers, sales representatives and vending personnel. (TR. 50; GC Exh. 3-4.) As of January 13, 2011, Teamsters Local 1164 represented fifteen (15) employees in a bargaining unit that included warehouse, forklift and one janitor. (TR. 169-171; GC Exh. 17, Article I, Section 1.)

Also at Maple Heights, ABC employed non-bargaining unit employees in classifications that were covered under the Local 348 – ABC collective bargaining agreement at Akron. Thirty-five (35) of these Maple Heights non-unit employees were working in the classification of merchandiser. (Tr. 622-623) Two (2) mechanics assigned to Maple Heights, were performing the same job functions as the Akron bargaining unit mechanics, but were not placed in either bargaining unit at Maple Heights. (Tr. 212-216)

On or about November 3, 2010, the Employer formally notified Teamsters Local Union No. 348 that it intended to relocate the entire operations of its Akron facility to 8400 Darrow Road, Twinsburg, Summit County, Ohio 44087 (“Twinsburg facility”). Teamsters Local Union No. 348 demanded bargaining regarding this mandatory subject. Representatives of the Employer and Teamsters Local Union No. 348, as well as Teamsters Locals 293 and 1164, met on several dates in November, 2010, December, 2010 and January, 2011 and ultimately agreed to certain mid-term modifications of the Local 348 Akron collective bargaining agreement to address the Akron to Twinsburg relocation. (Tr. 238-248; Tr. 639-671; GC Exh. 7; Intvr. Exh. 2)

During these relocation negotiations, the Employer advised that it intended to relocate thirty-six (36) previously unrepresented employees in the classifications of merchandiser and

mechanic from its Maple Heights, Ohio facility to its Twinsburg, Ohio facility. (Intervenor Exhibit 1; Tr. 454-455; Tr. 671; GC Exh. 35) These terms were reduced to writing and executed by Local 348 and the Employer on January 14, 2011 in an amendment to the June 1, 2008 to May 31, 2012 collective bargaining agreement. (Intervenor Exh. 2; Tr. 669-670; Tr. 747-748)

On January 6, 2011, Teamsters Locals 1164 and 293 each issued virtually identical letters to Teamsters Joint Council No. 41 asserting that 1164 and 293 were dropping their claims of jurisdiction to represent the workers at Twinsburg. On January 11, 2011, Teamsters Joint Council 41 sent a letter to the Local Unions stating that the jurisdictional dispute regarding representation of the employees at Twinsburg had been resolved by virtue of the January 6 letters from the Locals.

Respondent's negotiators relied upon these statements, the internal disputes resolution provisions of Article XIV⁵, together with Respondent's prior meetings with Local 293 and Local 348 representatives where Local 348 was presented in a joint union proposal as being the recognized representative for the Twinsburg unit (Tr. 644, lines 18 to 23; G.C. Exhibit 6), in order to complete the negotiations for an agreement on January 14, 2011⁶.

At the January 14, 2011 negotiations session, Employer representatives stated that the permissive negotiations to amend the recognition clause of the Local 348 collective bargaining agreement would not extend to an inclusion of the "advanced sales representative" classification

⁵ "Disagreements between Unions shall be resolved through the Union's mechanism and in accordance with the International Constitution", Article XIV, Transfer of Company Title or Interest, [General Counsel Exhibit 25; General Counsel Exhibit 47].

⁶ An employer is required to bargain over the effects of the relocation of unit work and that obligation includes bargaining over the relocated workers' wages, work locations, schedules, carryover of seniority and other terms and conditions of employment at the new facility, as well as over the conditions of the transfer. Comar, Inc., 339 NLRB 903, 913 (2003).

previously recognized between the Employer and Local 293 at Maple Heights. (Tr. 277; Tr. 724) The Employer did offer alternatives to allow those employees in the Maple Heights advanced sales representative positions to voluntarily transfer at Twinsburg to classifications within the Local 348 recognized unit, such as drivers, merchandisers and warehousemen, which was rejected by Local 293 at their meeting on January 12th. (Tr. 74-75;Tr. 662-663) Because of the permissive⁷ nature of an amendment to the Local 348 recognition clause that would include the “advanced sales representative” classification, and the Employer’s strident opposition to such an amendment, Local 348 negotiators agreed to the amended collective bargaining agreement for the Twinsburg location without inclusion of the Maple Heights “advanced sales representative” classification⁸. (Tr. 724-725)

Therefore, among the two bargaining units at Maple Heights and the Akron bargaining unit, Local 348’s representation “predominates” in the amended bargaining unit at Twinsburg as a majority of the represented employees as shown in the following Local 348 Brief Chart No. 1.

Akron Local 348		Maple Heights Local 293		Maple Heights Local 1164	
Drivers	17	Drivers	28	Warehouse Workers	13
Warehouse Workers	10	Transport Drivers	5	Custodian	1
Vending Employees	3	Helpers/Vending Employees	4		
Mechanics	2				
Merchandisers	25				
Total Employees	57	Total Employees	37	Total Employees	14

⁷ The scope of an existing bargaining unit is a nonmandatory, permissive subject of bargaining and neither side is forced to concede or even bargain about such an issue. Raymond F. Kravis Ctr., 351 NLRB 143, 162 (2007), citing, Douds v. Longshoremen’s Assn., 241 F.2d 278 (2d Cir. 1957).

⁸ The exclusion of the advance sales representative classification from Maple Heights at the Twinsburg relocation, and any unilateral changes to the terms and conditions of those employees after the relocation is not alleged as a violation in the Complaint, and such theory was expressly disclaimed by Counsel for the General Counsel at trial. (GC Exh. 1(e); Tr. 348, lines 13-14; “Nowhere are we alleging that the sales representatives belonged in the unit.”)

By January 17, 2011, all of the Employer's Akron facility bargaining unit operations, together with the Maple Heights operations, had been relocated to the Twinsburg facility. (Tr. 144-154; Tr. 162-165; Tr. 265-273; Tr. 328-332) During the negotiations regarding the amendment to the Local 348 agreement, the Respondent's representatives acknowledged that the classification of merchandiser was within the scope of the Local 348 recognized bargaining unit. (Tr. 459; Tr. 671)

Neither of the Employer's collective bargaining agreements with Local 293 or Local 1164 recognized the classification of merchandiser or mechanic. (GC Exh. 3; GC Exh. 17; Tr. 212-216; Tr. 522) Because these unrepresented merchandiser and mechanic employees relocated from the Maple Heights facility to the Twinsburg facility perform the same functions and duties, under the same supervision, as those merchandisers represented by Teamsters Local Union No. 348, these employees are properly included in the recognized bargaining unit represented by Teamsters Local Union No. 348⁹.

Because these new merchandiser and mechanics employees from Maple Heights were within the classifications of the existing Local 348 bargaining unit¹⁰, it was appropriate for Local 348 representatives to meet with the new merchandiser employees on January 19, 2011 at the Employer's Twinsburg facility during a meeting called for all the merchandiser employees relocating from both Akron and Maple Heights to Twinsburg. (Tr. 679; Tr. 683-684; GC Exh. 34)

⁹ Tree of Life, Inc. d/b/a Gourmet Award Foods, Northeast, 336 NLRB 872, 873-874 (2001).

¹⁰ The ALJ has issued an ERRATUM on September 13, 2011 in this case, correcting the August 12, 2011 decision on page 5, line 14 to describe the merchandiser employees at "Maple Heights", instead of "Akron", as being "unrepresented".

Additionally, the Employer relocated the two (2) employees working as transport drivers to Twinsburg. Because of their community of interest with the existing unit, the Employer and Teamsters Local Union No. 348 agreed to amend the recognition clause of their agreement to include these two transport drivers as part of the relocated Teamsters Local Union No. 348 bargaining unit. (Tr. 345) The number of bargaining unit employees represented by Teamsters Local Union No. 348 covered by the collective bargaining agreement with The American Bottling Company at the relocated Twinsburg facility was, at least, ninety-six (96) employees. (Tr. 669-671; Intvr. Exh. 1)¹¹ The relevant employee complement at Twinsburg was as set out in the following Local 348 Brief Chart No. 2:

	Akron Local 348		Maple Heights Former Local 293		Maple Heights Former Local 1164
17	Drivers	28	Drivers	13	Warehouse Workers
10	Warehouse Workers	5	Transport Drivers	1	Custodian
3	Vending Employees	4	Helpers/Vending Employees		
2/2 ¹²	Mechanics				
25/35 ¹³	Merchandisers				
2 ¹⁴	Transport Drivers				
96	Total Employees	37	Total Employees	14	Total Employees

Unrepresented in amended Akron/Twinsburg bargaining unit.

12 account manager combination – from Akron

22 sales representatives – from Maple Heights

¹¹ The record shows that 144 employees in the recognized unit began work at the relocated Twinsburg facility. The spreadsheet entered in the record as Intervenor Exhibit 1 was used by the parties during the January 14, 2011 negotiations to identify those employees bargaining unit transferring, their seniority dates and classifications and their rates of pay. (Tr.670) Although there were 145 employee names and information on the spreadsheet, it was confirmed that one driver on the list (either Troy Wojciechowski or Willie May) left employment and did not begin work at Twinsburg, (Tr. 377; Tr. 453), thereby reducing the number of transferred employees to 144.

¹² Two (2) mechanics from Maple Heights.

¹³ Thirty-five (35) merchandisers from Maple Heights.

¹⁴ Two (2) transport drivers reassigned from Columbus.

On or about January 17, 2011, the Employer closed its operations at its Maple Heights facility and transferred to its Twinsburg facility thirty-seven (37) employees in the classifications of delivery drivers, vending employees and transport drivers, formerly represented by Teamsters Local Union No. 293. Teamsters Local Union No. 293 had disclaimed¹⁵ continued bargaining representation of these employees under an existing collective bargaining agreement at Twinsburg and has ultimately consented to the Employer's cancellation of a collective bargaining agreement previously covering these employees at the Maple Heights facility¹⁶. Upon relocation and assignment at the Twinsburg facility, these thirty-seven (37) employees were properly covered by bargaining unit classifications recognized as represented by Teamsters Local Union No. 348.

On or about January 17, 2011, the Employer closed its operations at its Maple Heights facility and transferred to its Twinsburg facility fourteen (14) warehousemen employees, formerly represented by Teamsters Local Union No. 1164. Teamsters Local Union No. 1164 had disclaimed continued bargaining representation of these employees under an existing collective bargaining agreement at Twinsburg and had consented to the Employer's cancellation of a collective bargaining agreement previously covering these employees at the Maple Heights facility¹⁷. Upon relocation and assignment at the Twinsburg facility, these fourteen (14) employees were properly covered by bargaining unit classifications recognized as represented by Teamsters Local Union No. 348.

¹⁵ The "demand" letter Local 293 sent to the Employer on January 14, 2011 (GC Exh. 50) acknowledges the continued existence of the Local 348 contract and only demands that the Employer recognize Local 293 as representative of members of Local 293 from Maple Heights.

¹⁶ See, GC Exhibit 12 and GC Exhibit 52, describing withdrawal of Section 8(a)(5) charges.

¹⁷ See, GC Exhibit 52, describing withdrawal of Section 8(a)(5) charges.

The collective bargaining agreement between the Employer and Local 348 (General Counsel Exhibit 25; General Counsel Exhibit 47) contains the following language, under Article XIV, Transfer of Company Title or Interest:

“This agreement shall be binding upon the parties hereto, their successors, administrators, executors, and assigns. In the event an entire operation, or portion thereof, or rights only, are sold, leased, transferred or taken over by an outside third party, by sale, transfer, lease, assignment, receivership or bankruptcy proceedings, such operation or use of such rights shall continue to be subject to the terms and conditions of this Agreement, for the life thereof. **Whenever an operation is closed and the work is transferred to or absorbed by another unionized operation, the affected employees will be entitled to follow their work and their seniority shall be dovetailed at the new operation.** Disagreements between Unions shall be resolved through the Union’s mechanism and in accordance with the International Constitution....”(emphasis supplied)

This clause did not exist in the collective bargaining agreements between the Employer and Local 293 or Local 1164. (Compare GC Exh. 3 and GC Exh. 17) Local 348 representatives were consistent in its negotiations with the Employer that this clause required continued application of the Local 348 collective bargaining agreement at the relocated facility at Twinsburg. (Tr. 424-428; Tr. 665-667)

This clause practically directed the negotiators, both the Union representatives (Locals 348, 293 and 1164) and the Employer representatives, in the successive draft proposed amendments to the Local 348 – Akron Seven-Up collective bargaining agreement, combining the wages and working conditions for those employees who “followed their work” to Twinsburg. (GC Exh. 6; Tr. 645-649; GC Exh. 7; Tr. 655-657; Tr. 668-670; Intvr. Exh. 2 at Article VIII, Insurance, Article XXIV, Warehouse, Full Service Drivers, Vending and Mechanics, Article XXV, Distribution Department, Article XXVI, Merchandisers, Article XXVI, Wages).

The amended collective bargaining agreement applicable at the Twinsburg facility, which is the collective bargaining agreement between American Bottling Co., Inc. and Teamsters Local

Union No. 348 for the term June 1, 2008 to May 31, 2012, amended effective January 14, 2011 (GC Exh. 25; Intvr. Exh. 2), is an agreement setting the substantial wages, benefits and terms and conditions of the recognized bargaining unit. (Tr. 622-633; Tr. 668-671)

Local 348 representatives met with relocated Twinsburg employees on January 17th and January 19th to discuss the collective bargaining agreement applicable at Twinsburg and to obtain Teamsters membership transfer authorizations from Local 293 and Local 1164 members and union security authorizations for some of the transferred employees in the merchandiser, mechanic and transport driver classifications. (See, Testimony of Local 348 President Patrick J. Ziga, Tr. 399 – 406; 674 - 685.) These documents were forwarded to Respondent for authorized payroll deduction purposes. (Tr. 678 – 684).

Representatives of Teamsters Locals 293 and 1164 never requested access and were never denied access similar to that provided to Local 348 business agents at Twinsburg. (Tr. 332-333, 583) The evidence at trial showed that Charging Party Local 293's former stewards did speak on behalf of Local 293 at employee meetings held at the Twinsburg facility on January 17th outside the presence of any Employer managers or supervisors, and without the Local 348 full-time business agents in attendance. (Tr. 153-154, 159 164, 166-167) The Local 293 Health and Welfare Plan provides the health insurance coverage for the Twinsburg bargaining unit employees. (Tr. 135; Tr. 385; GC Exh. 25, Article VII)

QUESTIONS INVOLVED AND TO BE ARGUED

I. Whether under the Board's policies expressed in "relocation", "merger" and/or "consolidation" cases under Metropolitan Teletronics Corp., 279 NLRB 957, 960 (1986) and under Harte & Co., 278 NLRB 947, 955 (1986), are special remedies required if the Board

subsequently finds that a question concerning representation was created by the Employer's business decision. Intervenor Local 348 answers in the negative.

ARGUMENT

I. The relocation of operations and equipment remaining substantially the same from Maple Heights and Akron to Twinsburg did not create a question concerning representation or require special remedies if a QCR is subsequently determined to exist.

(a) Notice Reading Remedy

The Acting General Counsel's theory in this case is erroneously premised on the assertion that a question concerning representation, "QCR", was created at the opening of the Twinsburg facility¹⁸. The Acting General Counsel presents an argument that this "structural" QCR equates to violations occurring in an initial organizing context on the assertion that "employees are stripped of their right to self-organize through representatives of their own choosing". (GC Exceptions Brief at 3) However, the Acting General Counsel's theory in this case logically collapses when Counsel describes "the remedial touchstone" as being "effective relief to best restore the status quo and recreate an atmosphere in which employees will feel free to exercise their Section 7 rights to make an uncoerced choice regarding unionization." (GC Exceptions Brief at 4) The "status quo" in this case, prior to the alleged unfair labor practices on January 14, 2011, was that most of the employees were being represented under mid-term collective bargaining agreements¹⁹.

¹⁸ GC Exh. 1(e), Complaint ¶5(A), ¶5(D) and ¶8(B).

¹⁹ GC Exh. 1(e), Complaint ¶5(A) to ¶5(D).

Counsel for the Acting General Counsel in her brief makes two factual claims, without citation to the record, in an attempt to create a “self evident” finding of “lasting coercive impact” upon employees, (GC Exceptions Brief at 4), where it is stated:

“Moreover, sales representative employees who enjoyed union representation and contract benefits at Respondent’s Maple Heights facility were stripped from the unit altogether, while merchandiser employees who previously were not represented by a union were unilaterally placed in Respondent’s newly created unit.”

As to the unit status of the Maple Heights advanced sales employees, Counsel for the Acting General Counsel had taken the position at trial that “[n]owhere are we alleging that the sales representatives belonged in the unit.” (Tr. 348, lines 13-14) The contract benefits of these particular Maple Heights sales employees were addressed by the negotiators for all three unions on January 11th and 12th, when a tentative agreement was reached for these employees to transfer without loss of pay or benefits to other bargaining unit classifications. (Tr. 74-75; Tr. 662-663) In any event, no actions by the Respondent alleged in the Complaint or litigated at trial prevented these advanced sales representative employees from being represented in a separate bargaining unit at the Twinsburg facility, which was initially contemplated by Charging Party Local 293 in its first representation petition in this dispute. (GC Exh. 51)

All parties recognized that the classification of merchandiser was within the scope of the Local 348 recognized bargaining unit at Akron, and that these same contract conditions would apply to the newly transferred merchandiser employees at Twinsburg. (Tr. 459; Tr. 622-623; Tr. 671)²⁰ Contrary to the conclusory statement in Counsel for the Acting General Counsel’s brief, Respondent did not act “unilaterally” with regard to the unit placement of the Maple Heights merchandisers.

²⁰ See also, Intrv. Exh. 1, spreadsheet showing increased wage rates for relocated merchandiser employees from Maple Heights.

Therefore, the Administrative Law Judge was correct in finding a notice reading remedy inappropriate on this record as a whole. (ALJD 20) “The Board may order extraordinary remedies when the Respondent’s unfair labor practices are ‘so numerous, pervasive, and outrageous’ that such remedies are necessary ‘to dissipate fully the coercive effects of the unfair labor practices found.’” Federated Logistics, 340 NLRB 255, 258 fn. 11 (2003), citing and quoting Fieldcrest Cannon, Inc., 318 NLRB 470, 473 (1995). Where the General Counsel fails to offer any evidence to show that the Board’s traditional remedies are insufficient, such requests are denied. Chinese Daily News, 346 NLRB 906, 909 (2006)²¹.

(b) Access and Right To Address Employees

Similarly, the record fails to support the Acting General Counsel’s request for special access or meeting remedies. (GC Exceptions Brief at 5-6) Conceding the ALJ’s finding that “[t]here is no record evidence that these employees have abandoned their support for Locals 293 and 1164, or that there has been any significant employee turnover, in the 7 months since”, (ALJ D 20:48 – 50), Counsel for the Acting General Counsel asks the Board for the application of “an inference” regarding the effects of unremedied unfair labor practices without any record citation disputing the ALJ’s finding. (GC Exceptions Brief at 5) However, the cases cited by Counsel again fail to support any such inferences on this record.

In Jonbil, Inc., 332 NLRB 652 (2000), the Board found the need for special remedies due to the passage of time between the charges and the decision, the resulting employee turnover and the Board’s decision that although a bargaining order was warranted, a second election would be

²¹ The only case cited by Counsel for the Acting General Counsel in support of the notice reading remedy, The Loray Corp., 184 NLRB 557, 558 (1970), involved “numerous coercive statements and speeches” and discriminatory discharges of employees for their union activity. Nothing remotely similar exists in the present record.

conducted. In Haddon House Food Products, 242 NLRB 1057 (1979), the Respondent's managers had fired the entire bargaining unit complement in express retaliation to an organizing drive. The special remedies in John Singer, Inc., 197 NLRB 88 (1972) were found to be appropriate in a summary judgment refusal to bargain case where the Board found the reasons advanced by the Respondent to defend its refusal to bargain were meritless and insubstantial as to be frivolous. These cases have no relationship to the facts in this record.

The record shows that representatives of Teamsters Locals 293 and 1164 never requested access and were never denied access similar to that provided to Local 348 business agents at Twinsburg. (Tr. 332-333; Tr. 583) The evidence at trial also showed that Charging Party Local 293's former stewards did speak on behalf of Local 293 at employee meetings held at the Twinsburg facility on January 17th outside the presence of any Employer managers or supervisors, and without the Local 348 full-time business agents in attendance. (Tr. 153-154, 159 164, 166-167) The Local 293 Health and Welfare Plan does provide the health insurance coverage for the Twinsburg bargaining unit employees. (Tr. 135; Tr. 385; GC Exh. 25, Article VII)

Further, Counsel for the Acting General Counsel fails to point to any part of the record that would show that the Board's standard remedies would be inadequate for equal access to employees at this workplace. All employees have experience under Teamsters collective bargaining agreements at Akron and Maple Heights, and have shown the ability in this record to communicate and associate with each other without coercion from Respondent in the exercise of their Section 7 rights. (Tr. 153-154, 159 164, 166-167) The Board's standard remedies have not been shown to be inadequate. Chinese Daily News, 346 NLRB at 909.

(c) Notice mailing

Counsel for the Acting General Counsel's belated request for a notice mailing remedy to the merchandiser employees is similarly not supported by the record. In California Gas Transport, Inc., 347 NLRB 1314, 1362 fn. 64 (2006), notice mailing was ordered where, not only Respondent's egregious and widespread misconduct demonstrated a general disregard for employees' statutory rights, but the employee workplaces were located in multiple states and there were a significant number of "former employees" in addition to over-the-road drivers.

Here, the record does not support a similar home notice mailing requirement for merchandiser employees who will most likely return to the Twinsburg facility on a regular basis during any posting period. Again, the Board's standard remedies are not shown to be inadequate. First Legal Support Services, LLC, 342 NLRB 350, 350 fn. 6 (2004)

CONCLUSION

For the foregoing reasons and authority, Intervenor Teamsters Local Union No. 348 respectfully submits that the Exceptions of Counsel for the Acting General Counsel in this case should be overruled.

Dated this 23rd day of September, 2011.

Respectfully submitted,

/s/ James F. Wallington

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Certificate of Service

I hereby certify that on this 23rd day of September, 2011, I electronically filed the foregoing paper in Case 8-CA-39327 with the Executive Secretary for the National Labor Relations Board using the Board's E-File system, and served copies by email addressed to the representatives of the parties in this matter as follows:

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