UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CENTER CITY INTERNATIONAL TRUCKS, INC.	:	
Respondent	:	Cases Nos. 9-CA-60153 9-CA-60157
And	:	
INTERNATIONAL ASSOCIATION OF MACHINISTS & AREOSPACE WORKERS AFL-CIO DISTRICT LODGE 54, LOCAL LODGE 1471	:	
Charging Party	:	

CENTER CITY INTERNATIONAL TRUCKS, INC.'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE CARSON'S DECISION AND BRIEF IN SUPPORT

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Exception II – Judge Carson erred in finding Respondent unlawfully delayed in providing information which demonstrated pay increases from August 1, 2010 thru April 1, 2011 and, therefore, violated § 8(a)(5) of the Act.

Exception III – Judge Carson erred in finding Respondent unlawfully delayed informing the union that no supervisory notes existed and, therefore, violated § 8(a)(5) of the Act.

I. STATEMENT OF THE CASE

This case was tried before Administrative Law Judge George Carson II ("Judge Carson") in Columbus, Ohio, on September 19, 2011, pursuant to a consolidated complaint that issued on July 29, 2011. The complaint alleged that Center City International Trucks, Inc. ("Center City," "Respondent" or "Company") violated § 8(a)(5) of the National Labor Relations Act ("the Act") by failing and refusing to provide certain requested information related to a January 19, 2011 and a April 1, 2011 request for information. Judge Carson determined that the Company unlawfully delayed providing *some* of the requested information and failed to respond to *some* of the union's requests.

Specifically, since January 19, 2011 the union has requested that the Company provide the following information with respect to its group health insurance plan:

> (1) correspondence between Respondent, its agent, and insurance carriers to shop a new health care plan;
>
> (2) a copy of insurer responses, proposal content, bids, and coverage proposals with the actual premium cost breakdown Respondent would incur per participant within each option level offered by such plan;
>
> (3) a list of Respondent costs (premiums) by billing cycle per month for the health care plan in effect for the period of October 2008 through October 2009, November 2009 through October 2010, and November 2010 through January 2011, including the actual premium cost breakdown Respondent paid or incurred per participant within each option level.

(Decision p. 7.) Judge Carson correctly dismissed paragraph's one (1) and three (3) set forth immediately above. Accordingly, the alleged § 8(a)(5) violation at issue in this appeal with respect to the union's January 19, 2001 request for information is as follows: the Company unlawfully delayed providing the requested relevant information relating to insurer responses, proposal content and bids by failing to timely provide the 2010 "Proposal of Benefits" booklet. (Decision pp. 7-8.)

Additionally, since April 1, 2011 the union has requested that the Company provide the following information with respect to performance evaluations:

> (1) all documents used, including supervisory notes, memoranda, letters, written materials, electronic notes, messages or statements Respondent used to evaluate employees;
>
> (2) bargaining-unit employees' wage rate changes from August 1, 2010 through the most recent date any wage increase took place.

(Decision p. 8.) Judge Carson dismissed paragraph one (1) above, save for the requested supervisory notes. (Id.) With respect to paragraph two (2), Judge Carson determined that the Company unlawfully delayed the production of documents reflecting pay increases from August 1, 2010 thru April 1, 2011. (Decision p. 9.) Accordingly, the alleged § 8(a)(5) violations at issue in this appeal with respect to the union's April 1, 2011 request for information is as follows: the Company unlawfully delayed informing the union that no supervisory notes existed and the Company unlawfully delayed providing information to the union which demonstrated pay increases from August 1, 2010 thru April 1, 2011. (Id.)

II. FACTS

A. January 19, 2011 Request for Information

On January 19, 2011 Bill Rudis ("Rudis")[1] sent an information request to the Company seeking certain information with respect health care plan that the Company implemented on November 1, 2010. (G.C. 4.) Specifically, Rudis requested the following information:

> [T]he Union requests the Employer provide all correspondence with each insurance carrier its representative contacted or engaged discussion with to 'shop' a new health care plan, and provide a copy of all the health care insurer's responses, proposal content, bids and coverage proposals provided to the Employer with the actual premium cost breakdown that the Employer would incur per participant within each option level offered by such plan. Should the

[1] Bill Rudis is the union's lead negotiator and has been since September 2010. (Tr. p. 22.)

> Employer premium costs be configured utilizing another method such information should be provided.
>
> Also, the Union requests the Employer provide a complete list of all Employer costs (premiums) by billing cycle per month for the health care plan in effect for the period from October 2008 through October 2009; November 2009 through October 2010; and November 2010 through January 2011. Please provide the actual premium cost breakdown that the Employer (the actual dollars and cents paid to the insurer by the Employer) has paid or has incurred per participant (without name of the participant) within each option level offered by such plan. Should the Employer premium costs be configured utilizing another method such information should be provided. The Union understands that the Employer's health care plans for the period referred to in the paragraph above have been administered by United Healthcare. If another health care provider was engaged or contracted during the period referred to please provide the same information requested above.

(Id.) The Company produced all relevant information responsive to this request to the extent it had such information in its possession and to the extent such information existed. (Tr. p 162.) For instance, on January 20, 2011 the Company sent an e-mail to Rudis attaching documents responsive to the January 19, 2011 request. (G.C. 3.) Attached to said e-mail was correspondence from United Healthcare to the Company indicating that medical rates renew every twelve (12) months on the anniversary date and do not extend past that date without an increase in rates. (Id.) The letter also indicates that United Healthcare does not release claims information to employers who have less than 100 employees covered under the plan. (Id.) Also attached to the e-mail were bid proposals and premiums information from United Healthcare, Anthem and Medical Mutual for the healthcare plan that was implemented on November 1, 2010. (Id.)

During the January 28, 2011 bargaining session the Company notified Rudis that he would get the health care bills he requested in the near future. (R. 2 at p. CenterCity60153_subpoena_00006.) On February 7, 2011 the Company sent the requested healthcare bills to Rudis via three (3) e-mails. (G.C. 8.) This information enabled the union "to

go to insurance carriers and legitimately get – get them to give us quotes." (Tr. p. 113 and R. 3.) Lastly, during the May 26, 2011 bargaining session, Rudis outlined all of the union's work and its final healthcare proposal after ***finally receiving the requested information relevant to insurance***. (R. 10 at p. 291.) (Emphasis added.)

More importantly, the Company gave the union information prior to January 2011 which was responsive to the union's January 19, 2011 request for information. For instance, during the October 5, 2010 bargaining session the Company submitted a document to the union entitled *Breakdown of Group Health Insurance Renewal Process for upcoming Renewal of November 1, 2010 for Center City International Trucks, Inc.* (Tr. pp. 173-174, 236, R. 11 & R. 12.) The document was prepared by John Colston ("Colston")[2] specifically for the October 5, 2010 bargaining session. (Tr. pp. 173-174 & 236.) The document essentially outlined the policy and how Colston went about making the recommendation that the Company select the plan being offered by United Healthcare. (Tr. p. 236.) The document also outlines the substance of United Healthcare's proposals to the Company. (Id.) Lastly, the document demonstrates the general overview of how the Company ultimately selected United Healthcare's proposal. (Id.) Colston attended the October 5, 2010 bargaining session and explained the document to the union. (Tr. p. 237 & R. 12.)

During this meeting Colston also explained to the union how he communicates with the Company's broker, who also acts as the benefit's administrator. (Tr. p. 237.) Generally speaking, the benefit's administrator contacts the Company sixty (60) days prior to the renewal

[2] John Colston is the Company's Secretary-Treasurer. He has regularly participated in bargaining sessions since late April 2011 and has been the Company's lead negotiator since May 26, 2011. (Tr. pp. 233-235.) Additionally, Colston evaluates insurance proposals that are given to the Company whether, it is group health insurance or commercial insurance for the products the Company sells, services and/or maintains. (Tr. p. 234.) As Judge Carson aptly pointed out, Colston is the Company's "benefits administrator," the "financial guru behind what the benefits that get administered become." (Id.)

of a contract. (Id.) At that time they notify the Company where the existing carrier is with respect to the renewal. (Id.) It is at that time that Colston looks at the percentage of the increase and subsequently decides whether to accept the renewal as is or shop it with another carrier. (Tr. pp. 237-238.) Colston explained to the union that in this particular case he instructed the broker to shop the insurance with other carriers, the results of which are set forth in R. 11. (Tr. p. 238.) Certain carriers declined to bid, while others came back with the proposal listed. (Tr. p. 238 & R. 11.) Lastly, Colston has little, to no written correspondence with the benefit's administrator. (Tr. p. 238.) Most of the correspondence is telephonic. (Id.) Any written correspondence he receives consists merely of an analysis outlining the proposals received from the various carriers, analogous to what is set forth in R. 11. (Id.)

Additionally, on October 8, 2010 the Company provided the union with benefit summaries for the new fourteen (14) month plan that United Healthcare was proposing. (R. 13.) The Company also provided the summary plan descriptions and a completed health care form that the union had previously requested. (Id.) On October 11, 2010 the Company presented a timeline for the Company's insurance quote per the union's request. (Tr. pp. 183-184.) Nick Wahoff ("Wahoff")[3] forwarded an e-mail from the Company's benefit's administrator outlining the timeline to Rudis. (R. 16.) On November 5, 2011 the Company provided the union with the new healthcare package that was distributed to the employees and a copy of the comparative of the old plan versus the new plan, including cost differentials. (R. 14.)

Despite receiving all of the information noted above and having acknowledged receipt on February 7, 2011 (G.C. 8.) of the necessary information it needed to obtain quotes and shop a

[3] Nick Wahoff is the Government Sales Manager for the Company. Wahoff has been a regular member of the Company's bargaining committee since June 2010. (Tr. 166-167.) Wahoff took notes during the bargaining sessions and his bargaining notes were introduced as R. 2. (Decision p. 2.) Inadvertently omitted pages from R. 2 were admitted subsequent to the Hearing as R. 31. (Id.)

plan and acknowledging the same again during the May 26, 2011 bargaining session, Rudis sent correspondence to the Company dated June 27, 2011 alleging that the union had yet to receive information relevant to insurance that it had requested in January 2011. (G.C. 9.) Rudis simply reiterated the same request for information he submitted to the Company on January 19, 2011. (G.C. 4 & 9.) Consequently, during the June 28, 2011 bargaining session Wahoff and Colston instructed the union they were unclear as to Rudis's latest request for information as they had already provided to the union the health care information it had requested. (R. 2 at p. CenterCity60153_subpoena_00030 & R. 10 at p. 302.) Rudis was not present at this meeting nor did any of the union's representatives who were present explain to the Company the reasons as to why the information the Company had previously submitted the union was lacking. (Id.)

The parties met again on June 30, 2011. (R. 2 at p. CenterCity60153_subpoena_00032 & R. 10 at pp. 305-309.) Rudis was not present at this meeting. (Id.) Although the parties discussed the union's proposed insurance plan in comparison with the Company's current plan, Rudis's June 27, 2011 request was not discussed by the parties. (Id.) Nevertheless, on July 17, 2011 Rudis sent correspondence to Colston alleging again that the Company has failed to "provide the outstanding information concerning the union's repeated requests for UHC Health Care" and "all other outstanding insurance carrier information." (R. 27 at pp. 3-5.) Colston responded the very next day as follows:

> To the best of our knowledge all other items we have been asked to provide have been complied with at this point in time. If there is still an outstanding information request out there, let's discuss it at our next meeting to insure that I understand specifically what is still outstanding. Thanks for your understanding in this matter.

(Tr. p. 240 & R. 27 at p. 3.) Rudis responded on July 19, 2011 more or less regurgitating the union's January 2011 request for information. (R. 27 at pp. 1-2.) Notwithstanding, Rudis failed

to explain how or why the information that the Company had already provided was not responsive to the union's request. (Id.)

The parties discussed Rudis's July 19, 2011 correspondence during the July 25, 2011 bargaining session. (Tr. p. 215, R. 2 at pp. CenterCity60253_subpoena_00033-35 & R. 10 at pp. 310-320.) The Company responded that it had already provided this information. (Tr. p. 215 & R. 10 at p. 317.) Rudis indicated that he wanted the Company's healthcare costs and the correspondence between the Company's benefit's administrator and all the carriers they contacted. (Tr. pp. 215-216, R. 2 at p. CenterCity60253_subpoena_00034 & R. 10 at pp. 315-316.) Rudis stated that he requested this information last fall and because they did not have it, they were unable to shop a plan at that time. (R. 10 at pp. 315-316.) Colston again explained the process of how the Company shops its healthcare plan. (R. 2 at p. CenterCity60153_subpoena_00034.)

Furthermore, when discussing the Company's health care costs, Wahoff informed Rudis that the Company had already provided this information. (R. 10 at 317.) Subsequently, Colston and Rudis engaged in the following dialogue:

> John Colston – If I provide a couple of invoices from the years 2008, 2009, 2010, and 2011, would that suffice?
>
> Bill Rudis – You could provide beginning & ending invoices for each coverage year.

(Id.) Accordingly, it was agreed during this meeting that the Company would provide certain samplings of its health care invoices. (Tr. pp. 243-244 & 251-252.)

Consequently, the Company provided this information to the union during the July 27, 2011 bargaining session. (Tr. pp. 243-244, R. 28, R. 2 at p. CenterCity60153_subpoena_00043 & R. 10 at p. 326.) The Company also informed the union that this information was duplicative

of the information that was previously submitted to the union in February 2011. (Tr. pp. 217-219, 243-244 & R. 10 at p. 326.) Colston again reiterated the Company's sincere belief that it had provided all the information requested. (R. 10 at p. 326.) Additionally, both the union and the Company had their insurance representatives/benefit's administrators in attendance during the July 27, 2011 meeting. (Tr. p. 245, R. 2 at p. CenterCity60153_subpoena_00042 & R. 10 at p. 320.) During the meeting, the Company again provided several pieces of information to the union. (Tr. p. 245, R. 2 at pp. CenterCity60153_subpoena_00042-44 & R. 10 at p. 320-328.) The information dealt with the insurance proposals that the Company had received from its benefit's administrator. (Id.) The Company's benefit's administrator described the process of obtaining insurance for the Company. (R. 2 at p. CenterCity60153_subpoena_00042.) Moreover, the insurance representatives/benefit's administrators for either party discussed the union's proposed plan in comparison to the Company's current plan. (R. 2 at pp. CenterCity60153_subpoena_00042-44 & R. 10 at pp. 320-328.) Lastly, Rudis inquired as to the other proposals, besides United Healthcare, that were submitted the Company. (Tr. p. 247.)

As a result of the information gleaned from the July 27, 2011 meeting, Rudis submitted another request for information to the Company during the July 28, 2011 bargaining session. (R. 2 at p. CenterCity60153_subpoena_00037 & R. 10 at p. 334.) The extensive information request pertained to how the Company's benefit's administrator pursued the providers. (Id.) As part of its response, the Company submitted to the union an actual quote from the benefit's administrator relevant to the 2006-2007 plan year. (Tr. p. 62, R. 2. at p. CenterCity60153_subpoena_00040 & R. 10 at p. 350.) After reviewing the document, Rudis then requested the benefits proposal package for 2010. (Tr. pp. 62, 245-246 & 252.)

The 2010 document was subsequently provided to the union via e-mail in early September and across the table during the September 9, 2011 bargaining session. (R. 10 at pp. 359-360 & G.C. 11.) The same type of information in G.C. 11 had previously been provided to the union as far back as October 2010 when Colston attended the October 5, 2010 bargaining session. (Tr. p. 247.) Additionally, Rudis acknowledged that the majority of the information contained G.C. 11 had already been provided to the union in January 2011. (Tr. p. 68.) More importantly, Colston did not retain a copy of G.C. 11 on file after the plan had gone into effect. (Tr. p. 246.) Once the Company has made its decision as to which plan to implement, he has no need to retain the proposals. (Id.) Specifically, the Company had made its decision on October 15, 2010 which plan it was going to implement and, as of that time, the Company was no longer in contact with its benefit's administrator as they were under a fourteen (14) month contract with United Healthcare. (Tr. p. 248.) Nonetheless, when Rudis requested a copy of the 2010 booklet, Colston asked the benefit's administrator to go back to their file and obtain a copy for Rudis. (Tr. p. 246.)

B. <u>April 1, 2011 Request for Information</u>

On April 1, 2011, the union sent an information request to the Company seeking certain information with respect to the 2011 employee performance evaluations and wage rate and job classification changes that have occurred since August 2010 thru the current date. (G.C. 12.) Specifically, the union was seeking the following information:

> The Union requests you provide the following information: A copy of each bargaining unit employee's 2011 annual performance evaluation (review) with the reviewer's signature, all documents used, including supervisory notes and any other related memoranda, letters or related written materials and or electronic notes, messages or statements that were used to evaluate each section of each employee's evaluation, and the monetary and/or promotional result of each evaluation. Also, please provide a copy of the Performance Evaluation Software

> utilized by the Company in the evaluation and generation of the written evaluation (review) for each bargaining unit employee.
>
> The information provided should include: all evaluations and pay increases from August 1, 2010 to the current date or near date in which any increase will take place, and please provide the information to the Union in written and electronic form by Friday, April 8, 2011.
>
> **********
>
> Also, please provide a copy of all Company records concerning the starting wage rate of each and every bargaining unit employee and the wage and job classification changes that have been made by the employer since August 1, 2010 through and including the current date. This request includes any and all records for employees that have come into the bargaining unit since August 1, 2010.

(Id.) The parties were in trial in an unrelated matter from April 4, 2011 thru April 8, 2011 and were not scheduled to meet again until April 28, 2011. (Tr. pp. 206-207.)

During the April 28, 2011 bargaining session the Company provided the union with wage rate and job classification information for bargaining unit employees, including employee performance evaluations, per the union's April 1, 2011 request for information. (Tr. p. 185, R. 2 at p. CenterCity60153_subpoena_00024 & R. 10 at p. 271.) The Company also submitted payroll notices to the union during this meeting. (Tr. pp. 186-187, R. 2 at p. CenterCity60153_subpoena_00024, R. 10 at p. 271 & R. 18.) The payroll notices include any merit increases (the old rate of pay versus the new rate of pay) an employee may have received as a result of the 2011 performance evaluations. (Tr. pp. 186-187 & R. 18.) The payroll notices also include the employees' job classification. (Id.) Additionally, the Company provided the union with numerous spreadsheets setting forth employees' hourly wage rate, hire date, and job

classification. (Tr. pp. 191-193, R. 2 at p. CenterCity60153_subpoena_00024, R. 10 at p. 271 & R. 20.)[4]

The parties did not meet again until May 26, 2011. (Tr. p. 207.) It was at this meeting that the Company submitted the performance evaluation software and instruction manual to the union. (Tr. p. 207, R. 2 at p. CenterCity60153_subpoena_00027 & R. 10 at p. 286.) The evaluation software is copyrighted and Wahoff was unable to contact anyone at the software company in order to receive permission to copy the information and submit the same to the union. (Tr. pp. 207-208.) Accordingly, the Company provided the union with the performance evaluation software and instruction manual with the agreement that the union would return same once they had sufficiently reviewed the information. (Tr. pp. 207-208 & R. 2 at p. CenterCity60153_subpoena_00027.)

During the June 3, 2011 bargaining session the Company submitted two (2) additional spreadsheets to the union outlining wage rate and job classification changes. (Tr. pp. 196-197 & R. 22.) The first spreadsheet is dated May 31, 2011. (R. 22.) The spreadsheet sets forth the employees' name, job classification, hire date and hourly wage rate as of May 31, 2011. (Id.) The second spreadsheet is dated November 8, 2010 and contains the employees' name, job classification, hire date and hourly wage rate as of November 2010 and hourly wage rate as of March 25, 2011. (Id.) Furthermore, during the June 30, 2011 bargaining session the Company submitted another spreadsheet to the union. (Tr. pp. 198-199 & R. 24.) The spreadsheet contains employees' name, hire date and hourly wage rate as of June 30, 2011. (Id.) General Counsel did not dispute that the Company had provided all of the aforementioned spreadsheets.

[4] The spreadsheets are marked as Respondent's Exhibit 20. However, the spreadsheets are identified in the record as Respondent's Exhibit 23. (Tr. p. 191.)

More importantly, the Company gave the union information prior to April 2011 which was responsive to the union's April 1, 2011 request for information. For instance, on March 18, 2010 the union requested the following:

> Provide a copy of all bargaining unit employee's [sic] employed by the employer for the period 2008, 2009 and 2010, through current date by name, classification, shift and rate of pay. This requested information should include all bargaining unit employee's actual base hourly rate of pay and any merit pay. This request should include starting rate of pay and any changes in classification and rate of pay for the above-stated period for all bargaining unit employees and any employee(s) hired within the same three year time period, inclusive of promotions and demotions.

(R. 4.) The Company submitted its response to the union during the March 26, 2010 bargaining session. (R. 5.) The document contains the employees' names, hire date, job classification and hourly rate of pay as of October 10, 2008, October 31, 2009 and March 25, 2010. (Id.)

Furthermore, on April 18, 2010 the union sent correspondence to the Company requesting the following information:

> One copy of each Bargaining Unit employee annual performance evaluation with the reviewer's signature, all documents used to evaluate each section of each evaluation, and the monetary and/or promotional result of each evaluation. The information provided should include: all evaluations and pay increases from January 1, 2010 to the current date and be provided to the Union in written and electronic form. Likewise, all Company responses to this information request should be provided to the Union in written and electronic form.

(R. 6.) The Company complied with this request on April 26, 2010. (Tr. p. 257.) During the meeting, the Company submitted the 2010 performance evaluations. (Id.) Employees who received an increase in pay had payroll notices attached to their evaluations. (Tr. pp. 257-258.) As noted earlier, the payroll notices included the amount of the merit increases (the old rate of pay versus the new rate of pay) and the employees' job classification. (See, for example R. 18.) Approximately five (5) months later, the union made another request for information pertaining to employees' wages.

On August 24, 2010, the union sent correspondence to the Company requesting an updated list of bargaining-unit employees, including their job classification, their hire date, their hourly rate of pay as of September 2009 and their current rate of pay as of August 2010. (Tr. pp. 258-259 & R. 29.) The Company complied with the union's request by submitting the requested information during the August 27, 2010 bargaining session. (Tr. p. 260 & R. 29.) The document submitted to the union contains the employees' names, job classification, hire date, hourly rate of pay as of September 2009 and hourly rate of pay as of August 2010. (R. 29.)

On November 7, 2010 the Company furnished the union with another updated list of bargaining unit employees. (Tr. pp. 189-190 & R. 15.) The list set forth the employees' names, their hire date, their job classification and their hourly rate of pay as of November 2010. (Tr. pp. 189-190 & R. 19.) The company also sent this document to Rudis via e-mail on November 12, 2010. (Tr. pp. 129-130 & R. 9.)

Notwithstanding having already received the wage rate and job classification changes requested, Rudis continued to harass the Company. (G.C. 9.) Rudis sent correspondence to the Company dated June 27, 2011 alleging that the union had yet to receive the information it had requested with respect to wage rate and job classification changes. (Id.) Consequently, during the June 28, 2011 bargaining session, Wahoff and Colston instructed the union they were unclear as to Rudis's latest request for information as they had already provided to the union the information it had requested. (R. 2 at p. CenterCity60153_subpoena_00030 & R. 10 at p. 302.) Rudis was not present at this meeting nor did any of the union's representatives who were present explain to the Company the reasons as to why the information the Company had previously submitted the union was lacking. (Id.)

The parties met again on June 30, 2011. (R. 2 at p. CenterCity60153_subpoena_00032 & R. 10 at pp. 305-309.) Notably, Rudis was again absent from this bargaining session and neither party mentioned Rudis's June 27, 2011 request for information. (Id.) Nonetheless, on July 17, 2011 Rudis sent correspondence to Colston alleging again that the Company has failed to "provide the outstanding information concerning the union's repeated requests for [ ] the Wage and Performance data that the Company has not yet provided[.]" (R. 27 at pp. 3-5.) Colston responded the very next day as follows:

> To the best of our knowledge all other items we have been asked to provide have been complied with at this point in time. If there is still an outstanding information request out there, let's discuss it at our next meeting to insure that I understand specifically what is still outstanding. Thanks for your understanding in this matter.

(Tr. p. 240 & R. 27 at p. 3.) Rudis responded on July 19, 2011 alleging that the Company had failed to comply with the union's request for information. (R. 27 at pp. 1-2.) Notwithstanding, Rudis failed to explain how or why the information that the Company had already provided was not responsive to the union's request.

The parties discussed Rudis's July 19, 2011 correspondence during the July 25, 2011 bargaining session. (Tr. p. 215, R. 2 at pp. CenterCity60253_subpoena_00033-35 & R. 10 at pp. 310-320.) The Company notified the union that it had already given them this information and subsequently inquired as to why they continually kept making the same requests. (Tr. p. 203 & R. 2 at pp. CenterCity60153_subpoena_00033-35.) Furthermore, the Company informed the union that they do not have documents that show the actual changes as their payroll system is not capable of showing such changes. (Tr. pp. 203-204, 242, R. 2 at p. CenterCity60253_subpoena_00033 & R. 10 at p. 314.)

More importantly, the Company explained to the union that all it needed to do was put the spreadsheets side by side and subtract from the last one. (Tr. pp. 203-204.) It was during this meeting that Colston was able to figure out on his own that the union wanted the information provided to it in a monthly format despite the fact of having never received written or verbal correspondence from the union requesting the same. (Tr. pp. 205 & 243.) Consequently, Colston informed the union that the Company would have to prepare a special document illustrating the information in a monthly format. (Tr. p. 243.) During the meeting Colston showed both Rudis and Joe Gerchy ("Gerchy")[5] the format in which he would present the wage rate and classification changes on a monthly basis and Rudis subsequently agreed to the format. (Tr. pp. 162-163, 205, 243, R. 2 at p. CenterCity60253_subpoena_00034 & R. 10 at p. 315.) The Company provided this information to the union during the July 27, 2011 bargaining session. (Tr. pp. 201-203, 241-243, R. 25, R. 2 at p. CenterCity60153_subpoena_00043 & R. 10 at p. 326.) Colston again reiterated the Company's sincere belief that it had provided all the information requested. (R. 10 at p. 326.)

Lastly, the Company never did produce the requested supervisory notes as the Company does not maintain such notes. (Tr. p. 208.) The Company notified the union on multiple occasions that the requested supervisory notes do not exist. (Tr. p. 208, R. 2 at p. CenterCity60153_subpoena_00034, R. 10 at pp. 201-202, 319, R. 1 & G.C. 19.)

III. LAW AND ARGUMENT

Information relating to bargaining unit employees is presumptively relevant. The General rule is as follows:

[5] Joe Gerchy is a journeyman technician for Center City. He is the union's Negotiating Committee Chairman and has been involved in negotiations since the outset. (Tr. p. 138.) Gerchy is also the union's chief steward and he took notes during the bargaining sessions. (Decision p. 2.) Gerchy's bargaining notes were introduced as R. 10. Inadvertently omitted pages from R. 10 were admitted subsequent to the Hearing as R. 31. (Id.)

> [A]n employer must supply, on request, relevant information in the employer's possession needed by a labor union for the proper performance of its duties as the employees' bargaining representative; i.e., to enable the [union] to understand and intelligently discuss the issues raised in bargaining. Absent special circumstances, relevance is determinative of the duty to disclose. Relevance is to be determined by a liberal discovery-type standard. As the Supreme Court noted, [ ] each case must turn on its particular facts. The inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met.
> Where the requested information concerns wages and related information for employees in the bargaining unit, the information is presumptively relevant to bargainable issues.

See, *Langston Companies, Inc.*, 304 NLRB 1022, 1070 (1991), citing *Soule Glass and Glazing Co. v. NLRB*, 652 F. 2d 1055 (1st Cir. 1981) (Internal quotations and citations omitted.)

Moreover, when a union makes a request for relevant information, the employer is obligated to supply the information in a timely fashion or to sufficiently explain why the information was not furnished. See, *Irontiger Logistics, Inc.*, JD (ATL)-14-11, p. 8 (2011), citing *Beverly California Corp.*, 326 NLRB 153, 157 (1998). An employer cannot simply disregard a union's request for information. See, *Irontiger Logistics, Inc.*, JD (ATL)-14-11, p. 8 (2011), citing *Daimler Chrysler Corp.*, 331 NLRB 1324, 1329 (2000) and *Interstate Food Processing*, 283 NLRB 303, 304 at fn. 9 (1987). "[A]n employer must respond to a union's requests for relevant information within a reasonable time, either by complying with it or by stating its reason for noncompliance within a reasonable period of time. Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) and (1) of the Act. Some kind of response or reaction is mandatory." See, *Irontiger Logistics, Inc.*, JD (ATL)-14-11, p. 8 (2011), citing *Columbia University*, 298 NLRB 941, 945 (1990) and *Ellsworth Sheet Metal*, 232 NLRB 109 (1977).

Furthermore, an employer has an obligation to furnish requested relevant information without undue delay. See, *Woodland Clinic*, 331 NLRB 735, 736 (2000) and *Barclay Caterers,*

308 NLRB 1025, 1037 (1992). In assessing the reasonableness of a delay, relevant considerations include the complexity, the extent of the information sought, the availability and the difficulty in retrieving the requested information. See, *West Penn Power Co*., 339 NLRB 585 (2003) and *House of the Good Samaritan*, 319 NLRB 392 (1995). "Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow." See, *West Penn Power Co*., 339 NLRB 585 (2003), citing *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993).

Under certain circumstances, a delay can be reasonable. Simply showing that disclosure may impose strains on the Company's personnel, however, does not outweigh the union's right to inspect the information requested. See, *H.J. Scheirich Co*., 300 NLRB 687, 689 (1990). In *Union Carbide Corp*., 275 NLRB 197 (1985), almost immediately upon receiving the information request, the employer began the difficult, time consuming, and expensive task of gathering the relevant data. The project lasted continuously for about 10 months when all the data was finally compiled and approved for release. (Id.) Since there was no showing that the Respondent's procedures for handling the information requests were unreasonable or that it could have expedited the production some other way, the Board found that no § 8(a)(5) violation occurred. (Id.)

In *United States Postal Service*, 2006 NLRB LEXIS 291, *66 (2006), the Respondent's failure to timely respond to information requests was unreasonable. It never advised the requesting party that her requests were unduly burdensome, nor did its representatives speak with her about narrowing the requests. Furthermore, the Respondent did not provide any proof about the time and resources necessary to comply with the requests. Id., citing, *Goodyear Atomic*

Corp., 266 NLRB 890, 891 (1983), enfd. 738 F.2d 155 (6th Cir. 1984). The provided information and the unreasonably long time it took to provide that information are listed below:

Information	Time Took to Provide
Hours Analysis Reports (HAR) for both facilities	17 weeks
Flash Reports and HAR for several employees	11.5 weeks
Weekly hours and duties for two employees (2004)	11 weeks
Weekly work hours and duties for four employees	5 weeks
Employee Everything Reports	11 weeks
Weekly hours and duties for two employees (2005)	11 weeks
Hours for Light Duty Carriers Assigned to Clerk Duties	9.5 weeks

Here, Center City has complied with Board precedent with respect to providing the requested documents to the union in a reasonable time. Center City explained to the union numerous times that the Company did not maintain supervisory notes as they did not exist. More importantly, to the extent relevant documents existed, Center City submitted the same to the union in timely fashion. A delay in the production of documents is permissive if reasonable and, here, the minor delay is more than reasonable. As cited above, case law typically requires severe or pervasive delay in document production before finding a violation of 8(a)(5), i.e. 11 weeks, 9.5 weeks, 17 weeks, 26 week, etc. As set forth more fully below, the Company made a good faith effort to respond to the union's requests in a timely fashion.

A. Exception I – Judge Carson Erred In Finding Respondent Unlawfully Delayed In Providing The Requested Relevant Information Relating To Insurer Responses, Proposal Content And Bids By Failing To Timely Provide The 2010 "Proposal Of Benefits" Booklet In Violation Of § 8(A)(5) Of The Act

On January 20, 2011 the Company sent an e-mail to Rudis attaching documents responsive to the January 19, 2011 request. (G.C. 3.) Attached to said e-mail were bid proposals and premiums information from United Healthcare, Anthem and Medical Mutual for the healthcare plan that was implemented on November 1, 2010. (Id.) Less than one month after its

January 19, 2011 request for information, the Company had satisfactorily complied with the request and the union had the necessary information it needed in order to obtain quotes. (Tr. pp. 110-113.) Indeed, the union submitted its healthcare proposal to the Company on February 28, 2011. (Tr. pp. 53 & 74.) Moreover, during the May 26, 2011 bargaining session Rudis acknowledged having received the requested information relevant to insurance. (R. 10 at p. 291.) Accordingly, the information contained in the Proposal of Benefits booklet (G.C. 11) was duplicative of the information the Company had already provided to the union in October 2010 and January 2011. (Tr. pp. 68-69 & 247.) Nonetheless, Judge Carson determined that the Company unlawfully delayed providing the "Proposal of Benefits" booklet. (Decision p. 7.) Judge Carson reasoned that the booklet was not provided until September 2011 and although the vast majority of the information included in the booklet was duplicative of information already provided to the union in January and February of 2011, it contained some information that was not provided to the union. (Id at pp. 4-5 & 7-8.)

However, this booklet was provided to the union as part of a separate request for information. During the July 27, 2011 meeting, both the union and the Company had their insurance representatives/benefit's administrators in attendance. (Tr. p. 245, R. 2 at p. CenterCity60153_subpoena_00042 & R. 10 at p. 320.) During the meeting, the Company again presented several items to the union with respect to the insurance proposals that the Company had received from its benefit's administrator. (Tr. p. 245, R. 2 at pp. CenterCity60153_subpoena_00042-44 & R. 10 at p. 320-328.) Further, the Company's benefit's administrator described the process of obtaining insurance for the Company. (R. 2 at p. CenterCity60153_subpoena_00042.) The insurance representatives/benefit's administrators for each party also discussed the union's proposed plan in comparison to the Company's current

plan. (R. 2 at pp. CenterCity60153_subpoena_00042-44 & R. 10 at pp. 320-328.) Lastly, Rudis inquired as to the other proposals, besides United Healthcare, that were submitted the Company. (Tr. p. 247.) As a result of the information gleaned from the July 27, 2011 meeting, Rudis submitted another request for information to the Company during the July 28, 2011 bargaining session. (R. 2 at p. CenterCity60153_subpoena_00037 & R. 10 at p. 334.)

The extensive information request pertained to how the Company's benefit's administrator pursued the providers. (Id.) As part of its response, the Company submitted to the union an actual quote from the benefit's administrator relevant to the 2006-2007 plan year. (Tr. p. 62, R. 2. at p. CenterCity60153_subpoena_00040 & R. 10 at p. 350.) After reviewing the document, Rudis then requested the benefits proposal package for 2010. (Tr. pp. 62, 245-246 & 252.) The 2010 document was subsequently provided to the union via e-mail in early September and across the table during the September 9, 2011 bargaining session. (R. 10 at pp. 359-360 & G.C. 11.)

The same type of information in G.C. 11 had previously been provided to the union as far back as October 2010 when Colston attended the October 5, 2010 bargaining session. (Tr. p. 247.) Additionally, Rudis acknowledged that the majority of the information contained G.C. 11 had already been provided to the union in January 2011. (Tr. p. 68.) Notably, the presumed delay did not prevent the union from proposing its alternate healthcare plan and during the May 26, 2011 bargaining session, Rudis outlined all of the union's work and its final healthcare proposal after ***finally receiving the requested information relevant to insurance.*** (Decision p. 3 and R. 10 at p. 291.) (Emphasis added.)

More importantly, Colston did not retain a copy of G.C. 11 on file after the plan had gone into effect. (Tr. p. 246.) Once the Company has made its decision which plan to implement, he

has no need to retain the proposals. (Id.) The Company had made its decision on October 15, 2010 as to which plan it was going to implement. As such, the Company was no longer in contact with its benefit's administrator as they were under a fourteen (14) month contract with United Healthcare. (Tr. p. 248.) Nonetheless, when Rudis requested a copy of the 2010 booklet, Colston asked the benefit's administrator to go back to their file and obtain a copy for Rudis. (Tr. p. 246.)

The Company was not refusing to provide documents to the union nor was it concealing documents from the union. Furthermore, no one from the Company ever instructed the union that it was refusing to provide said information to the union. (Tr. p. 273.) The parties have been discussing healthcare for nearly a year and continue to do so at the present time. The Company continues to provide documents and, as noted above, has even had its benefit's administrator attend bargaining sessions to try and appease the union. These are not the actions of a company refusing to provide information and/or stonewalling a union. Rather, they are the actions of a company making a reasonable good faith effort to respond to the union's redundant requests as swiftly as circumstances will allow.

B. Exception II – Judge Carson Erred In Finding Respondent Unlawfully Delayed In Providing Information Which Demonstrated Pay Increases From August 1, 2010 Thru April 1, 2011 In Violation of § 8(a)(5) of the Act

Less than one month after its initial request, the union had all the relevant information it needed to determine bargaining-unit wage rate and classification changes that had occurred from August 2010 thru April 2011. Specifically, on April 28, 2011, the Company provided the union with wage rate and job classification information for bargaining unit employees as of April 4, 2011. (Tr. p. 185, CenterCity60153_subpoena_00024 & R. 10 at p. 271.) The Company also submitted payroll notices to the union during this meeting. (Tr. p. 186-187, R. 2 at p.

CenterCity60153_subpoena_00024, R. 10 at p. 271 & R. 18.) The payroll notices include any merit increases (the old rate of pay versus the new rate of pay) an employee may have received as a result of the 2011 performance evaluations. (Tr. pp. 186-187 & R. 18.) The payroll notices also include the employees' job classification. (Id.) Additionally, the Company provided the union with numerous spreadsheets setting forth employees' hourly wage rate, hire date, and job classification. (Tr. pp. 191-193, R. 2 at p. CenterCity60153_subpoena_00024, R. 10 at p. 271 & R. 20.)[6]

The union was already in possession of the majority of the information it was seeking. For instance, on March 26, 2010, the Company submitted a document to the union containing bargaining-unit employees' names, hire date, job classification and hourly rate of pay as of October 10, 2008, October 31, 2009 and March 25, 2010. (R. 5.) On April 26, 2010, the Company provided the union with the 2010 performance evaluations. (Tr. p. 257.) Employees who received an increase in pay had payroll notices attached to their evaluations. (Tr. pp. 257-258.) As noted earlier, the payroll notices include the amount of the merit increases (the old rate of pay versus the new rate of pay) and the employees' job classification. (See, for example R. 18.)

Likewise, on August 27, 2010, the Company submitted a document to the union containing bargaining-unit employees' names, job classification, hire date, hourly rate of pay as of September 2009 and hourly rate of pay as of August 2010. (Tr. pp. 152-153, 260 & R. 29.) Lastly, on November 7, 2010 the Company supplied the union with another updated list of bargaining unit employees. (Tr. pp. 154, 189-190 & R. 15.) The list set forth the employees' names, their hire date, their job classification and their hourly rate of pay as of November 2010.

[6] The spreadsheets are marked as Respondent's Exhibit 20. However, the spreadsheets are identified in the record as Respondent's Exhibit 23. (Tr. p. 191.)

(Tr. pp. 189-190 & R. 19.) The company also sent this document to Rudis via e-mail on November 12, 2010. (Tr. pp. 129-130 & R. 9.)

Analogous to the union's April 1, 2011 request for information, their 2010 requests for wage increases and job classification changes did not specify that the information need be presented in a format illustrating each month of the time period requested. All the union had to do is view these documents/spreadsheets side by side in order to determine whether an employee received a merit increase or a change in job classification. For instance, R. 29 illustrates that employee Kyle Chilton ("Chilton") was a Journeyman Mechanic/Technician who was making $21.50 an hour as of September 2009 and $22.00 an hour as of August 2010. The spreadsheet provided to the union in November 2010 illustrates that Chilton was still a Journeyman Mechanic/Technician and his rate of pay remained unchanged at $22.00 an hour. (R. 19.) The payroll notices submitted to the union on April 28, 2011 illustrate that Chilton was still a Journeyman Mechanic/Technician and that he received a merit increase of $1.02 increasing his hourly rate of pay to $23.02 an hour. (R. 18 at p. CenterCity04932.)

Another example is Wesley Huddleson ("Huddleson"). R. 29 illustrates that Huddleson was a Mechanic Helper I making $16.03 an hour as of September 2009 and $17.00 an hour as of August 2010. The spreadsheet provided to the union in November 2010 illustrates that Huddelson was still a Mechanic Helper I and his rate of pay remained unchanged at $17.00 an hour. (R. 19.) The payroll notices submitted to the union on April 28, 2011 illustrates that Huddelson was now a Utility Technician and that he received a merit increase of $.50 increasing his hourly rate of pay to $17.50 an hour. (R. 18 at p. CenterCity04921.)

Notwithstanding all of the above, Judge Carson determined that the Company unlawfully delayed the production of information reflecting pay increases from August 1, 2010 thru April 1,

2011 that the union deemed to be acceptable. (Decision p. 9.) Consequently, Judge Carson concluded that the Company had violated § 8(a)(5) of the Act. (Id.) Judge Carson's reasoning is faulty for a variety of reasons. First, during the hearing, the union alleged that the manner in which the information was provided was not sufficient in that it did not allow the union to verify the conditions under which employees are given merit increases and/or moved to a different classification nor did it allow them to determine whether an employee received one (1) $.50 raise or two (2) $.25 raises. (Tr. pp.162 & 267.) It was the union's contention that they needed to see this information in a format illustrating each month of the time period requested. However, when asked by Judge Carson whether that really mattered, Gerchy acknowledged that it did not. (Tr. p. 162.) Accordingly, the union did indeed have the information it requested within a month of its initial request. More importantly, Gerchy acknowledged that the union's correspondence did not request that the information be provided in a format that displayed each month. (Tr. p. 152, G.C. 12 & 13.)

Secondly, Judge Carson noted as follows:

> I find that the Respondent might well have believed that it had complied with that request. In that regard I note that the Respondent had provided wage and job classification information in 2010, including information as of August 15, 2010, and similar information in 2011, including specifically the March 15 listing of employee wage rates.

(Decision p. 9.) Nevertheless, Judge Carson determined that as of June 27, 2011, the Company was on notice that the union did not deem the information it had already received to be responsive to the information it had requested. Specifically, Judge Carson stated that the "Respondent could not, in good faith, have continued to believe that it had complied with the Union's request after Rudis sent the email to Colston on June 27 protesting the failure of the Respondent to provide that information." (Id.) Accordingly, Judge Carson determined that as of

June 27, 2011, the onus was on the Company to seek clarification from the union as to why the information it had already provided to the union was deficient. (Id.)

After June 27, 2011 the Company twice asked for clarification; once during the June 28 bargaining session and once via e-mail on July 18, 2011. Each time the union simply reiterated that it was missing the information it had requested without explaining to the Company why the information it had already provided to the union was insufficient. (R. 2 at p. CenterCity60153_subpoena_00030, R. 10 at p. 302, Tr. p. 240 & R. 27 at pp. 3-5.). The union never informed the Company that it was seeking the information in a format that illustrated each month. The Company was simply providing the requested information in the same format that it had when submitting its responses to the union's 2010 requests for wage rate and job classification changes. It was not until the July 25, 2011 bargaining session that that Colston was able to figure out on his own that the union wanted the information provided to it in a monthly format despite the fact of having never received written or verbal correspondence from the union requesting the same, (Tr. pp. 205 & 243.)

Colston informed the union that the Company would have to prepare a special document illustrating the information in a monthly format as the Company's payroll system was not capable of producing the requested information. (Tr. p. 241-243.) During the meeting Colston showed the union the format in which he would present the wage rate and classification changes on a monthly basis and Rudis subsequently agreed to the format. (Tr. pp. 162-163, 205, 243, R. 2 at p. CenterCity60253_subpoena_00034 & R. 10 at p. 315.) The Company provided this information to the union during the July 27, 2011 bargaining session. (Tr. pp. 201-203, 241-243,

R. 25, R. 2 at p. CenterCity60153_subpoena_00043 & R. 10 at p. 326.)[7] Accordingly, less than one month following the precise moment that Judge Carson determined that the Company "could not, in good faith, have continued to believe that it had complied with the Union's request" the company was able to produce eight (8) spreadsheets that it had to specially craft for the union because its payroll system was incapable of producing the same. (Tr. pp. 241-242.)

More importantly, the Company was able to produce the requested information within two (2) days of having finally figured out on its own what the union was seeking. Producing specially created documents in less than a month cannot be determined to be an unlawful delay, especially taking into consideration that the union never once affirmatively notified the Company that it was seeking the requested information on a monthly basis *before* Colston was able to deduce that this is what the union was seeking.

A delay in the production of documents is permissive if reasonable and, here, the minor delay is more than reasonable. As cited above, case law typically requires severe or pervasive delay in document production before finding a violation of § 8(a)(5), i.e. 11 weeks, 9.5 weeks, 17 weeks, 26 week, etc. Here, the Company provided the union with the relevant information that it requested within a month of Judge Carson's June 27, 2011 date in which the Company could have no longer believed in good faith that it had complied with the union's request.

[7] Even then, Rudis lied at trial testifying that the information provided to the union was not sufficient and that he did not instruct Colston that the monthly format Colston had proposed was acceptable. (Tr. pp. 268, 272 & 277.) Rudis's testimony not only wholly contradicted the testimony he provided on direct examination, it also contradicted the testimony provided by Wahoff, Colston, Gerchy and the parties' bargaining notes. (Rudis – Tr. p. 94; Wahoff – Tr. pp. 203-205; Colston – Tr. pp. 241-243; Gerchy – pp. 154 & 161-263; R. 2 at pp. CenterCity60153_subpoena_00034; and R. 10 at pp. 314-315.)

Such egregious behavior exhibited by the union's chief negotiator plainly illustrates that the Company was never going to be able to satisfy the union's requests no matter how much information, in various formats, it submitted to the union.

C. Exception III – Judge Carson Erred In Finding Respondent Unlawfully Delayed Informing The Union That No Supervisory Notes Existed In Violation of § 8(a)(5) of the Act

The Company did not produce supervisory notes to the union as these do not exist. The union contends that the supervisory notes do exist as a result of information they learned during a grievance meeting. (Tr. p. 91.) In any event, the Company notified the union on multiple occasions that the requested supervisory notes do not exist. Specifically, the Company sent letters to the union on February 28, 2011 and March 7, 2011 informing them that the only notes the Company had on file with respect to the grievance was the verbal reprimand of which the union *already* had a copy of. (G.C. 19 and R. 1.)

Nevertheless, Judge Carson determined that the Company unlawfully delayed informing the union that no supervisory notes existed in violation of § 8(a)(5) of the Act. (Decision p. 9.) Specifically, Judge Carson stated as follows:

> [T]he Respondent did not timely inform the Union that there were not any other supervisory notes. On May 2, Rudis protested the failure of the Company to provide supervisory notes. The Respondent did not, until the bargaining session on July 25 almost 4 months after the initial request and 3 months after the request of Rudis on May 2, inform the Union that no notes existed, neglecting to acknowledge the supervisory note retained by Supervisor Stickel.

(Id.) As noted above, the Company sent letters to the union on February 28, 2011 and March 7, 2011 notifying them that the only notes the Company had on file with respect to the grievance was the verbal reprimand of which the union *already* had a copy of. (G.C. 19 and R. 1.)

Moreover, Gerchy's notes from the February 27, 2011 grievance meeting expressly state that the verbal reprimand (put into writing per the request of Gerchy) was the only document in the grievant's file and the Company was offering to remove it from the said file. (R. 10 at pp. 201-202.) Additionally, Gerchy *already* had a copy of the reprimand. (G.C. 19.) Furthermore, Wahoff again instructed Rudis during the July 25, 2011 bargaining session that the Company

does not maintain supervisory notes. (Tr. p. 208, R. 2 at p. CenterCity60153_subpoena_00034 & R. 10 at p. 319.) Simply put, the Company cannot produce documents which do not exist. The union was on notice prior to its April 1, 2011 request for information that the only supervisory notes the Company had in its possession was a verbal reprimand (which was memorialized in writing per Gerchy's request) of which the union *already* had a copy of. Consequently, the Company did not violate § 8 (a)(5) of the Act.

IV. CONCLUSION

For the reasons outlined above and in accordance with the evidence, Respondent did not violate § 8(a)(5) of the Act. Accordingly, the Respondent respectfully requests that the Board reverse Administrative Law Judge Carson's rulings, findings, conclusions and recommended Order with respect to the issues raised on exception and dismiss the Complaint in its entirety.

Dated at Dublin, Ohio on this 13th day of December, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 13, 2011, an electronic original of Respondent Center City International Trucks, Inc.'s Exceptions and Brief In Support was transmitted the National Labor Relations Board, office of the Executive Secretary, via the Department Of Labor, National Labor Relations Board electronic filing system and, further, that copies of the foregoing Exceptions and Brief In Support were transmitted to the following individuals by electronic mail:

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