

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

CENTER CITY INTERNATIONAL
TRUCKS, INC.

and

Cases 9-CA-060153
9-CA-060157

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
AFL-CIO, DISTRICT LODGE 54, LOCAL
LODGE 1471

COUNSEL FOR THE ACTING GENERAL COUNSEL'S
REPLY BRIEF TO RESPONDENT'S
ANSWER TO GENERAL COUNSEL'S LIMITED CROSS-EXCEPTIONS
TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION

I. STATEMENT OF THE CASE:

On January 10, 2012, Respondent filed an answering brief in response to the Counsel for the Acting General Counsel's limited cross-exceptions. Counsel for the Acting General Counsel, pursuant to Section 102.46(h) of the Rules and Regulations of the National Labor Relations Board, respectfully submits this reply brief in the above cases.

II. LEGAL ANALYSIS:

A. The Administrative Law Judge Erred in Concluding That Respondent Complied With the Portion of the Union's Information Request Seeking Correspondence With Each Insurance Carrier its Representatives Contacted.

In its answering brief in response to the Counsel for the Acting General Counsel's limited cross-exceptions, Respondent contends "Judge Carson correctly determined that the Company ultimately provided the Union with all the information it had obtained from its benefits

administrator.”^{1/} (R. Ans. Br. p. 9) Judge Carson determined “[t]here [was] no evidence that the responses of the insurers were not ultimately provided to the Union.” (ALJD p. 7) Both assertions cited above are not supported by the record evidence. Judge Carson correctly noted that “Colston^{2/} admitted that he did not request the benefits administrator to provide correspondence with any insurance companies. Colston did not specifically deny the existence of correspondence with the benefits administrator.” (ALJD p. 4) Colston admittedly failed to request information from Respondent’s broker that the Union specifically sought in its January 19, 2011 information request. (Tr. 250-251; G.C. Ex. 4) Counsel for the Acting General Counsel respectfully submits that Judge Carson’s finding that no evidence was presented that the responses of the insurers were not ultimately provided to the Union is in direct contradiction with his finding that Colston admittedly failed to request correspondence between Respondent’s broker and insurance agencies. The Union requested “all correspondence with each insurance carrier *its representative* contacted or engaged discussion with to ‘shop’ a new health care plan.” (G.C. Ex. 4) (emphasis added) Colston neglected to inquire if Respondent’s hired broker had correspondence with insurance agencies it contacted. If Colston failed to ask for correspondence between Respondent’s healthcare broker and the insurance agencies its broker contacted, Respondent cannot know whether additional responses or correspondence existed between the broker and the insurance agencies its broker contacted. If Respondent cannot know whether correspondence existed without first asking the question, it was error for Judge Carson to determine that all responses from the insurers were ultimately provided to the Union.

^{1/} References to the Administrative Law Judge’s Decision are designated as (ALJD p. ____); references to Respondent’s answering brief are designated as (R. Ans. Br. p. ____); references to the trial transcript are designated as (Tr. ____); references to the General Counsel’s trial exhibits are designated as (G.C. Ex. ____).

^{2/} John Colston is Respondent’s Secretary Treasurer and representative who corresponds with Respondent’s healthcare insurance broker.

Further, Respondent in its answering brief admits that Colston neglected to request correspondence from its healthcare broker. (R. Ans. Br. p. 7-8) Respondent contends, as justification for such neglect, that “the record, as noted above, is littered with evidence demonstrating that the Company was in ongoing communications with its broker relevant to the union’s insurance information request.” (*Id.*) However, whether Respondent had ongoing communications with its broker is irrelevant. What is relevant is the fact that Respondent, through Colston, admittedly ignored the Union’s information request seeking correspondence between Respondent’s healthcare broker and the insurance agencies its broker contacted. Consequently, since it did not ask the question, Respondent has no way of knowing whether its broker had additional correspondence with insurance agencies it had failed to provide to the Union.

III. CONCLUSION:

Based on the record as a whole, and for the reasons referred to herein, Counsel for the Acting General Counsel respectfully submits that the Board should grant Counsel for the Acting General Counsel’s limited exceptions and the decision of Judge Carson should be reversed insofar as it concludes that Respondent complied with the portion of the Union’s information request seeking correspondence with each insurance carrier its representatives contacted or engaged discussion with to “shop” a new health care plan.

Dated at Cincinnati, Ohio this 24th day of January 2012.

Respectfully submitted,



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