UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SIX

USIC LOCATING SERVICES, INC.,

Respondent,

and **Case 6-CA-37328**

COMMUNICATION WORKERS OF AMERICA, LOCAL 13000, AFL-CIO, CLC,

Charging Party.

RESPONDENT'S BRIEF SUPPORTING THE ADMINISTRATIVE LAW JUDGE'S DECISION TO DISMISS THE COMPLAINT AND RESPONDENT'S CROSS-EXCEPTIONS TO DECISION OF ADMINISTRATIVE LAW JUDGE AND OPPOSING COUNSEL FOR THE ACTING GENERAL COUNSEL'S AND CHARGING PARTY'S EXCEPTIONS TO DECISION OF ADMINISTRATIVE LAW JUDGE

Cynthia K. Springer
Faegre Baker Daniels LLP
300 N. Meridian Street
Suite 2700
Indianapolis, IN 46204
Phone: (317) 237-0300
Fax: (317) 237-1000

Attorneys for Employer

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SIX

USIC LOCATING SERVICES, INC.,

Respondent,

and **Case 6-CA-37328**

COMMUNICATION WORKERS OF AMERICA, LOCAL 13000, AFL-CIO, CLC,

Charging Party.

RESPONDENT'S BRIEF SUPPORTING THE ADMINISTRATIVE LAW JUDGE'S DECISION TO DISMISS THE COMPLAINT AND RESPONDENT'S CROSS-EXCEPTIONS TO DECISION OF ADMINISTRATIVE LAW JUDGE AND OPPOSING COUNSEL FOR THE ACTING GENERAL COUNSEL'S AND CHARGING PARTY'S EXCEPTIONS TO DECISION OF ADMINISTRATIVE LAW JUDGE

I. INTRODUCTION

Charging Party, through its administrative unit, Unit 112, represents certain of Respondent's employees, referred to herein as the "Unit." Consistent with the language of the Collective Bargaining Agreement ("CBA") between Charging Party Communication Workers of America, Local 13000, AFL-CIO, CLC's administrative unit, Unit 112 ("Local Union"), and Respondent USIC Locating Services, Inc. and longstanding National Labor Relations Board ("Board") precedent, after the CBA's December 4, 2009 expiration and after giving the Local Union notice of its intent to do so, Respondent ceased deducting union dues from Unit employees' paychecks. Two years later, Charging Party and Counsel for the Acting General Counsel of the National Labor Relations Board ("Board") seek to overturn longstanding precedent, establish a new standard that would require an employer to continue deducting union dues following contract expiration, and apply this new standard retroactively to Respondent.

Respondent hereby files this brief supporting the Administrative Law Judge's ("ALJ") Decision to dismiss the unfair labor practice charge and its Cross-Exceptions to certain of the Administrative Law Judge's Decision findings and opposing Counsel for the General Counsel's (hereafter "General Counsel") and Charging Party's Exceptions to the Decision of the Administrative Law Judge ("ALJ"). Respondent did not violate the Act and, therefore, the Board should reverse the ALJ's findings to which Respondent cross-excepts and sustain the ALJ's dismissal of this case.

II. STATEMENT OF THE CASE

On June 6, 2011, Charging Party filed the instant charge. (S.R. 1, Ex. A)[1] On August 30, 2011, the Regional Director for Region Six of the Board issued a Complaint in this proceeding. (S.R. 2, Ex. B) On September 9, 2011, Respondent filed an Answer. (S.R. 3, Ex. C) On November 16, 2011, the parties submitted a Joint Motion and Stipulation of Facts requesting that the ALJ issue a decision based on the case record defined therein. On November 16, 2011, ALJ David Goldman issued an Order in which he approved the Stipulation of Facts set forth in the Joint Motion and granted General Counsel leave to file an amended complaint. On November 21, 2011, General Counsel filed an Amended Complaint (Ex. M) and on December 9, 2011, Respondent filed its Answer to Amended Complaint. (Ex. N) General Counsel, Respondent and the Union filed briefs with the ALJ in support of their positions by December 14, 2011. On January 10, 2012, the ALJ issued a Decision finding the Respondent did not violate the Act and recommended that the Complaint be dismissed. On February 22, 2012, General Counsel filed an Exception to the ALJ's Decision and Charging Party filed Exceptions to the ALJ's Decision.

[1] The Stipulated Record is referred to as "S.R." Exhibits included in the Stipulated Record are referred to as "Ex."

III. ISSUES

The issues presented in this matter are the following:

(a) Whether Respondent violated Section 8(a)(1) and Section 8(a)(5) of the National Labor Relations Act ("Act") by unilaterally failing and refusing, since December 7, 2010, to continue to honor dues authorizations submitted by bargaining unit employees before December 4, 2009.

This issue relates to Cross-Exceptions nos. 1-15.

(b) Whether Respondent violated Section 8(a)(1) and Section 8(a)(5) of the Act since May 13, 2011, by refusing the Local Union's request to process dues authorization cards by letter dated May 6, 2011, in which the Local Union requested that Respondent process dues authorization cards for eleven members of the Unit.

This issue relates to Cross-Exception nos. 1-15.

IV. STATEMENT OF FACTS

On January 5, 1995, Charging Party was certified as the exclusive collective bargaining representative of the Unit. (S.R. 12) The International Union and Local 13000, through the Local Union, and Central Locating Services, to which Respondent is a successor, entered into a CBA effective from November 1, 2006, through October 30, 2009, which the parties mutually agreed to extend to November 18, 2009 and then to December 4, 2009. (S.R. 13, 14) Article IV of the CBA, titled "Agency Shop/Payroll Deductions," states,

> All employees who are members of the Union or who are obligated to tender to the Union amounts equal to periodic dues on the effective date of this Agreement, or who later become members, and all employees entering into the bargaining unit on or after effective date of this Agreement, shall as a condition of employment pay or tender to the Union amounts equal to the periodic dues applicable to members from such effective date or, in the case of such employees entering into the bargaining unit after

> the effective date, on the thirtieth day after such entrance, until the termination of this contract.
>
> The condition of employment specified above shall not apply during periods of formal separation from the bargaining unit by any such employee but shall reapply to such employee on the thirtieth day following his return to the bargaining unit.
>
> The Company may request an updated payroll deduction authorization card as may be required under the Company's administrative and accounting procedures.
>
> The Union agrees to hold the Company harmless against any claims that might be made by any employee against the Employer in complying with the provisions of this Article.

(Ex. F, pp. 2-3)

On November 18, 2009, Respondent notified the Local Union of its intent to discontinue dues deductions upon the CBA's December 4, 2009 expiration. (S.R. 16) After the Union received this notice, the parties did not bargain concerning dues deduction discontinuance. (S.R. 16) On November 18, 2009, Respondent presented to the Local Union its Last, Best and Final Offer ("LBFO"). (S.R. 16) On February 2, 2010, Respondent notified the Local Union that when it implemented its Last, Best and Final Offer on March 1, 2010, it would not implement the tentatively agreed-to Dues Checkoff Clause, and that the Local Union should contact Respondent's Attorney Springer should it want to discuss the issue. (S.R. 17) The Local Union did not file an unfair labor practice charge against Respondent for implementing the LBFO without implementing the tentatively agreed-to Dues Checkoff Clause. (S.R. 17)

On June 17, 2010, Respondent and the Local Union reached agreement concerning dues deduction checkoff, including back dues payments to March 1, 2010. (S.R. 17) However, on June 19, 2010, the Unit members failed to ratify this agreement. (S.R. 17) The Local Union has made no further requests to bargain. (S.R. 17)

By letter dated May 6, 2011, Charging Party sent Respondent's Payroll Supervisor a memo, in which she enclosed Dues Authorization Cards for eleven Unit employees and stated, "Enclosed please find Dues Authorization Card(s) for the following member(s) in CWA Local 13000: . . . When the card(s) have been processed, please sign on the confirmation line, date and return in the enclosed envelope. (S.R. 18(a), Ex. I) On or about May 13, 2011, Cynthia Springer ("Springer"), attorney for Respondent, sent Charging Party's representative a letter in which she stated in relevant part, "USIC currently does not have a collective bargaining agreement with CWA Local 13000 covering its Pennsylvania employees. Accordingly, USIC is not legally required to, and will not, process such dues authorization cards. If you have any questions concerning this matter, please direct them to my attention." (S.R. 18(b), Ex. J)

V. ARGUMENT

A. The ALJ Incorrectly Failed To Dismiss The Complaint Because The Express CBA Language Does Not Require The Respondent To Deduct Union Dues

Nothing in the CBA requires Respondent to deduct union dues from Unit employees' paychecks. The only CBA provision that mentions deductions does not refer to union dues. Article IV, titled, "Agency Shop/Payroll Deductions," includes an administrative payroll deduction provision, which states that:

> The Company may request an updated payroll deduction authorization card as may be required under the Company's administrative and accounting procedures.

(Ex. F, p. 3) There is no other CBA language concerning deductions. The Article IV language permits (but does not require) the Company to update payroll deduction authorization cards from Unit members in keeping with its administrative and accounting procedures, nothing more. The provision, by its plain language, would apply to any deduction, including insurance premiums, 401(k) plan deductions or any other such deduction an employee may authorize. There is no

evidence it applies to union dues but, even if it does, it does not require Respondent to administer any payroll deductions, much less a union dues deduction. Thus, it appears that Charging Party is attempting to use the Board processes to obtain something it did not obtain through collective bargaining -- a purported right to require Respondent to remit dues to the Local Union.

The ALJ states, "Although the obligation to check off dues during the term of the contract is less than clear in the 2006 Agreement, it appears to have been the consistent practice of the Respondent and in its amended answer the Respondent admits it "was required to and had the right to deduct union dues" "until the termination of th[e] contract." (ALJD p. 3)[2] In fact, the 2006 Agreement clearly does not require the Respondent to check off dues during the contract term as discussed above. "The obligation to checkoff dues . . . cannot exist in a bargaining relationship until the parties affirmatively contract to be so bound." *Hacienda Hotel Inc.*, 355 NLRB No. 154 (*"Hacienda III"), Members Schaumber and Hayes, concurring.* The record evidence fails to show that the parties affirmatively contracted for Respondent to deduct and remit Union dues.

And, contrary to the ALJ's assertion, there is no record evidence of any "consistent practice" to deduct Union dues. To the extent Respondent accepted and processed union dues checkoff authorizations from Unit employees, its only arguable contract obligation was with the Unit employees, not the Union. In fact, in *Hacienda Hotel, Inc.,* 331 NLRB 665, 670 fn. 10, Fox and Liebman, dissenting, (*"Hacienda I")* stated,

> A checkoff authorization is a contract between an individual employee and his employer by which the employee assigns to the

[2] Incidentally, there is no record evidence the Respondent's LBFO, which Respondent later implemented, contained any provision concerning Union dues checkoff. When Respondent's counsel informed the Local Union it did not intend to implement various provisions that it could not legally implement, she included in that list a "Dues Checkoff Clause." (S.R. 17) But this mere reference does not make the LBFO include language that is not, in fact, included in the LBFO. Further, the *Katz* doctrine applies to collective bargaining agreements, not unilaterally implemented LBFO's.

> union a portion of his future wages and authorizes the employer to deduct those amounts from his pay and remit them to the union. Checkoff authorizations are separate and legally distinct from dues-checkoff *clauses*, which are provisions in contracts between union and employers setting forth the employer's agreement to honor check-off authorizations executed by employees.

(Emphasis in original; internal citations omitted.) Thus, in the absence of a dues checkoff *clause*, the most that one can say is that, after December 4, 2010, Respondent did not honor the checkoff authorization contracts it had with individual Unit employees, which is separate and distinct from a checkoff *clause* that evidences a union and employer's agreement in a collective bargaining agreement to honor employee-executed union dues checkoff authorizations. Since no such clause exists, Respondent's refusal and failure to continue to deduct Union dues after December 4, 2010 does not implicate any obligation to the Union to continue to deduct union dues post-contract expiration under *Katz*.

Similarly, the ALJ's statement (ALJD p. 3) that Respondent's Other Defenses statement that Respondent had a right to and was required to deduct dues "until the termination of this contract" does not change the CBA language to say something it does not say. As the United States Supreme Court held, in *H.K. Porter Co.*, 397 U.S. 99, 102 (1970), the Board has no power to remedy an unfair labor practice by requiring a company to agree to dues checkoff when it has not agreed to it. To the contrary, "while the Board does have the power under the National Labor Relations Act, 60 Stat. 136, as amended, to require employers and employees to negotiate, it is without power to compel a company or a union to agree to any substantive contractual provision of a collective-bargaining agreement." *Id.* That is precisely the case here. The parties did not agree to union dues checkoff. The Board lacks the authority to compel it to do so now. Thus, it must dismiss this Complaint for this reason alone.

B. The ALJ Correctly Found That Respondent Lawfully Discontinued Union Dues Deductions Upon Contract Expiration

The ALJ appropriately applied the longstanding rule established in *Bethlehem Steel* to this case in finding that Respondent did not commit an unfair labor practice when it ceased union dues deductions upon contract expiration. *Bethlehem Steel*, 136 NLRB 1500, 1502 (1962) (An employer lawfully can cease dues checkoff upon contract expiration.)

Further, in *Hacienda Resort Hotel and Casino (Hacienda III),* 335 NLRB 154 (2010), the Board's most recent decision addressing this subject, on second remand from the Ninth Circuit Court of Appeals, the Board effectively reaffirmed the *Bethlehem Steel* precedent. The Ninth Circuit rejected the Board's *Hacienda III* decision only with respect to dues checkoff provisions that "exist as a free-standing, independent convenience to willingly participating employees." *Local Joint Exec. Bd. of Las Vegas, Culinary Workers Local 226 v. NLRB*, 657 F.3d 865, 875 (September 13, 2011). (*"LJEB")* In other words, the Ninth Circuit found that, *in the absence of a union security clause*, it was unlawful to cease dues checkoff upon contract expiration.

The Ninth Circuit did not address the situation presented here in which the expired CBA includes a union security clause that requires dues payment as a condition of employment (and, as discussed above, in which the expired CBA contains no language requiring dues checkoff). This case is further distinguishable from the facts that led the Ninth Circuit to find an unfair labor practice in *LJEB*, in that (a) Respondent discontinued dues deductions immediately upon contract expiration, (b) Respondent notified the Local Union that it intended to discontinue dues deduction before doing so, and (c) there is no record evidence the Local Union requested to bargain concerning this subject after receiving such notice.

Moreover, ceasing union dues deductions upon CBA expiration is a lawful economic weapon. "The Act is premised on the view that in arms-length economic relationships, there can be areas of conflict between employers and employees that, if the parties cannot reach agreement, can be resolved through a contest of economic strength in the collective-bargaining process if the employees choose to bargain collectively." *Brevard Achievement Center, Inc.*, 342 NLRB 982, 985 (2004). The Board may not "pass judgment on the legitimacy of any particular economic weapon used in support of genuine negotiations." *NLRB v. Katz*, 369 U.S. 736, 747 (citing *NLRB v. Insurance Agents*, 361 U.S. 477 (1960)). The United States Supreme Court recognized in *NLRB v. Brown*, 380 U.S. 278 (1965), that in the absence of proven unlawful motivation, an employer may use economic weapons to interfere in some measure with concerted employee activities, or which, in some manner, discourage union membership, and yet Section 8(a)(1) and Section 8(a)(3) do not prohibit their use.

Respondent presented to the Local Union its LBFO and simultaneously notified the Local Union that it intended to cease any dues deductions upon CBA expiration. (S.R. 16) The Board has not prohibited employers from using cessation of dues deduction as an economic weapon. In fact, it is a lawful economic weapon when, as in this case, it is used in conjunction with lawful bargaining. *See* Member Schaumber and Member Hayes's *Hacienda III* concurrence, in which they state, "[A]n employer's ability to cease dues checkoff upon contract expiration has become a recognized economic weapon in the context of bargaining for a successor agreement," and, "To strip employers of that [weapon]would significantly alter the playing field that labor and management have come to know and expect." *Hacienda III*, 355 NLRB No. 154, slip op. at 5, citing *NLRB v. Insurance Agents*, 361 U.S. 477, 489 (1960). Chairman Liebman and Member Pearce, in their concurring opinion, affirmed that an employer

lawfully may use this economic weapon provided it is engaged in lawful bargaining. *Hacienda III*, 355 NLRB No. 154, slip. op. at 3. There is no record evidence that Respondent was not engaged in lawful bargaining. Accordingly, its use of this economic weapon was lawful.

Principles of *stare decisis* further require that the Board dismiss this Complaint. The doctrine of *stare decisis* requires that once a court or administrative agency decides a question of law, it creates a precedent that should be followed in subsequent cases. The Board should consider *stare decisis* in all cases applying Board precedent because "there are values that are inherent in the doctrine of *stare decisis*. These values include stability, predictability, and certainty of the law. In the context of labor relations law, these values are outweighed only upon a clear showing that extant law is contrary to statutory principles, disruptive to industrial stability, or confusing." *Levitz Furniture Co. of the Pacific, Inc.*, 333 NLRB 717, 731 (2001) (Member Hurtgen concurring).

The Board should uphold the principle of *stare decisis* in this case because doing so upholds the important values of stability, predictability and certainty of law. The *Bethlehem Steel* rule has been in effect for 50 years and has provided stability, predictability and certainty of law with respect to the negotiation, implementation and cessation of dues checkoff provisions. Nothing about it is confusing – when the contract expires, the dues checkoff provision expires. *Bethlehem Steel's* progeny have reinforced these principles. Nothing in *Bethlehem Steel* contradicts the Act. To the contrary, *Bethlehem Steel's* rule is consistent with the Act's fundamental principles of independence, freedom of contract, and employee free choice.

Changing this rule after 50 years of precedent would disrupt industrial stability. Parties that have negotiated dues checkoff provisions with the understanding that they will expire upon contract expiration will have lost the benefit of their bargain. In successor contract

negotiations, employers will propose eliminating checkoff to protect their ability to cease checkoff upon bargaining impasse and will stop agreeing to dues checkoff provisions during bargaining for new contracts because they would continue beyond contract expiration, bogging down bargaining for both new and successor contracts. The Board cannot seriously want to create the quagmire that such a ruling will produce.

C. The ALJ Incorrectly Failed To Recognize That A Board Majority Has Provided Sound Reasoning To Depart From The *Katz* Doctrine

In *Bethlehem Steel*, 136 NLRB 1500, 1502 (1962), a Board majority recognized that dues checkoff provisions are creatures of the contract that expire with the contract, explaining,

> The acquisition and maintenance of union membership cannot be made a condition of employment except under a contract which conforms to the proviso to Section 8(a)(3). . . . However, upon the termination of a union-security contract, the union-security provisions become inoperative and no justification remains for either party to the contract thereafter to impose union-security requirements. . . . Similar considerations prevail with respect to Respondent's refusal to continue to check off dues after the end of the contracts. The check-off provisions in Respondent's contracts with the Union implemented the union-security provisions. The Union's right to such checkoffs in its favor, like its right to imposition of union-security, was created by the contracts and became a contractual right which continued to exist so long as the contracts remained in force. The very language of the contracts links Respondent's checkoff obligation to the Union with the duration of the contracts. Thus, they read: ". . . the Company will, beginning the month in which this Agreement is signed and so long as this Agreement shall remain in effect, deduct from the pay of such Employee each month . . . his periodic Union dues for that month." Consequently, when the contracts terminated, the Respondent was free of its checkoff obligations to the Union.

For the past 50 years, the Board had decided cases implementing this rule. It is, in fact, logical, that since the Act provides that a union security provision expires upon contract expiration, the dues checkoff provision that implements that provision concurrently expires.

Even the Ninth Circuit, after 15 years of litigation in which it thrice considered the interconnectedness of these two provisions agrees. The Court found the distinction between right-to-work states and non-right-to-work states to be "crucial" in this regard. *LJEB*, 657 F.3d at 875. It explained that, "unlike in *Bethlehem Steel*, where the unilateral cessation of dues-checkoff merely terminated a contractual arrangement that individual employees and employers alike were compelled to accept, the unilateral cessation of check-off by the Employers in this case stripped employees of a contractual right that they had expressly exercised by requesting dues-checkoff. *Id.* The Court acknowledged that it understood "why the Board would treat dues-checkoff in the same manner as union security where both are present." Thus, an appellate court that has had this issue before it three times understands and accepts the *Bethlehem Steel* rationale, based on the principle that "if union security provisions are limited by statute to the duration of an existing CBA, dues-checkoff provisions that 'implement[] the union-security provisions' are limited in the same manner." *Id.* (citing *Bethlehem Steel*, 136 NLRB at 1502).

The Ninth Circuit's conclusion in this regard applies to our facts, where the Respondent, located in Pennsylvania, a non-right-to-work state, ceased union dues deductions following expiration of a contract containing a union security clause. The rationale is even more compelling in our case because, while the CBA contains a union security clause that expressly and statutorily ceases upon contract expiration, the CBA contains no dues checkoff provision. Therefore, there is no basis whatsoever for finding cessation of union dues checkoff upon contract expiration to be an unfair labor practice.

D. The ALJ's Finding That The General Counsel's Arguments For Overturning Fifty Years Of Precedent Are "Substantial" Is Itself Insubstantial

General Counsel argues that the Board precedent, beginning with *Bethlehem Steel* and extending for 50 years should be overruled. General Counsel asserts numerous arguments to

bolster its position, all of which are unavailing. While the ALJ finds these arguments to be "substantial" (ALJD p. 7), they ignore the fact that Sections 8(a)(3) and 302(c) of the Act treat dues checkoff as a creature of the contract distinct from wages, hours and other terms and conditions of employment. And they ignore the fact that their rationale tramples on employees' Section 7 rights and the freedom of contract. The ALJ has accepted their rationale with no consideration of these legal principles.

1. The Act Supports Current Board Law

Under Section 8(a)(3) and Section 302(c)(4) of the Act, a dues checkoff arrangement is only lawful if there is a written collective bargaining agreement between an employer and a union and a dues deduction authorization signed by each affected employee. Section 8(a)(3)[3] allows an employer and a union to require all bargaining unit employees to pay union dues as a condition of employment. Section 302[4] prohibits any employer payments to unions, with enumerated exceptions, one of which is that the employer may do so pursuant to an employee's written wage assignment.

In its Exceptions, General Counsel asserts that *Bethlehem Steel* is wrongly decided because it links the requirement that a union security provision be included in a written collective bargaining agreement to dues checkoff. General Counsel contends that Section 8(a)(3)

---

[3] Section 8(a)(3) states, as relevant here, "nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement." 29 U.S.C. §158(a)(3).

[4] Section 302(c)(4) states, "It shall be unlawful for any employer or association of employers . . . to pay . . . any money or other thing of value . . . (2) to any labor organization . . . which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce . . ..It then enumerates exceptions to this prohibition, stating in relevant part, "The provisions of this section shall not be applicable . . . (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective bargaining agreement, whichever occurs sooner . . .." 29 U.S.C. §186(c)

only requires a collective bargaining agreement provision for union security and not for dues checkoff. General Counsel also contends that Section 302(c)(4) only requires a written wage assignment but not a collective bargaining agreement. General Counsel asserts that the Board has mistakenly combined these concepts. But the *Bethlehem Steel* Board considered only the collective bargaining agreement requirement contained in Section 8(a)(3) and did not even address the Section 302(c)(4) written wage assignment provision. In *Bethlehem Steel*, the Board explained that union security and dues checkoff become terms and conditions of employment only by virtue of a collective bargaining agreement, unlike wages, benefits and hours, which are employment conditions regardless of contract existence. *Bethlehem Steel*, 136 NLRB at 1502. *See also*, *Hacienda III*, 355 NLRB, slip op at 4-5. (Members Schaumber and Hayes concurring). Section 302(c)(4)'s provision does not come into play until there is a collective bargaining agreement.

General Counsel further contends that "A few courts have misconstrued Section 302(c)(4) to prohibit checkoff in the absence of a current agreement between the employer and union." (G.C. Brief, p. 11). The courts General Counsel cites, however, did not state that Section 302(c)(4) alone required a written collective bargaining agreement. Rather, they reached this conclusion by properly reading Section 8(a)(3) and Section 302(c)(4) together. And while General Counsel cites *Tribune Publishing Co. v. NLRB,* 564 F.3d 1330, 1335 for the proposition that Section 302(c)(4) does not require a written collective bargaining agreement, *Tribune Publishing Co.* addressed Section 302(c)(4) alone and did not address Section 8(a)(3).

General Counsel further argues that checkoff does not merely implement union security because dues checkoff creates a wage assignment independent from a collective bargaining agreement that assigns a part of future wages to the union and it must be revocable by

the employee upon contract expiration and thus, can survive the expiration of a collective bargaining agreement. (G.C. Brief, p. 9) But General Counsel misses the point. Pursuant to Section 302(c)(4), when a collective bargaining agreement is expired, the wage assignment can continue beyond expiration unless revoked because of the wage assignment contract between the employee and the employer, which is separate and distinct from any obligations the employer has to the union under an expired dues deduction provision in a collective bargaining agreement. The logical reason Section 302(c)(4) requires that the wage assignment be revocable upon contract expiration is that once the contract expires, the wage assignment is no longer compelled by the collective bargaining agreement but the separate and distinct wage assignment contract between the employee and employer continues. While the employee arguably may have a cause of action against an employer for ceasing such union dues deductions after contract expiration, the union has none because when a collective bargaining agreement includes both a union security and dues checkoff provision, the dues checkoff provision serves to implement the union security provision. *Bethlehem Steel*, 136 NLRB at 1502.

General Counsel also cites Board and Courts of Appeals decisions to support the contention that dues checkoff is an administrative convenience for dues collection rather than a union security device. (G.C. Brief, p. 9) Two of the cases she cites, *Shen-Mar Food Products, Inc.*, 221 NLRB 1329, 1330 (1976), *enf'd. as modified* 557 F.2d 396 (4th Cir. 1977) and *NLRB v. Atlanta Printing Specialties and Paper Products Union 527, AFL-CIO*, 523 F.2d 783, 786 (5th Cir. 1975) both arise in right-to-work states; thus, dues checkoff could not have been a means to implement union security.[5] In the third case, *American Nurses' Association*, 250 NLRB 1324, 1324 n.1 (1980), the cited footnote stating that, "union security and dues checkoff are distinct and separate matters" is in the context of employees revoking their dues checkoff authorizations

[5] *Shen-Mar* arose in Virginia and *Atlanta Printing* arose in Georgia.

and the Board's determination that such actions did not constitute resignation from the union. *See, Id.* at 1328. That case does not address a dues checkoff provision contained in a collective bargaining agreement and its tie to a contractual union security provision.

Further, while the United States Supreme Court has not decided whether checkoff survives contract expiration, it has recognized this statutorily based principle. *See*, *Litton Business Systems v. NLRB*, 501 U.S. 190 (1991), in which the Court, citing specifically to Section 302(c)(4) and to *Indiana & Michigan Electric*, 284 NLRB 53, 55 (1987)[6], stated, "[I]t is the Board's view that union security and dues check-off provisions are excluded from the unilateral change doctrine because of statutory provisions which permit these obligations only when specified by the express terms of a collective-bargaining agreement." And, as previously mentioned, the United States Supreme Court refused to enforce the Board's order in *H.K. Porter*, 397 U.S. at 102, to force dues checkoff upon an employer that had refused to agree to dues checkoff in the course of negotiations, finding the Board "without power to compel a company or a union to agree to any substantive contractual provision of a collective-bargaining agreement." Respondent has not agreed to dues checkoff and any attempt by the Board to force it to do so contradicts the United States Supreme Court's *H.K. Porter* holding.

2. General Counsel's Arguments Are Inconsistent With Principles Underlying The *Burns* Line Of Cases

Within the context of *Burns* successorship cases, checkoff provisions are tied to and dependent upon a collective bargaining agreement. *NLRB v. Burns Security Services*, 406 U.S. 272 (1972). Under the *Burns* doctrine, a successor employer may be required to recognize

[6] In *Indiana & Michigan*, the Board stated, that the exception to the *Katz* doctrine is "based on the fact, noted in *Bethlehem Steel*, that '[t]he acquisition and maintenance of union membership cannot be made a condition of employment except under a contract which conforms to the proviso to Section 8(a)(3).' This term and condition is thus inherently and solely a contractual matter, and an employer's refusal to enforce a union-security provision without a proper contractual basis is 'in accordance with the mandate of the Act.' 136 NLRB at 1502."

and bargain with a pre-existing union, but it does not necessarily assume the predecessor's collective bargaining agreement and obligations. *Id.* at 281-282. That only occurs if the new employer takes actions manifesting acceptance of and adoption of the pre-existing collective bargaining agreement. *Id.* at 291.

Dues checkoff is one of several factors the Board has considered to determine whether a successor has adopted a predecessor employer's collective bargaining agreement. According to the Board, as enforced by the Courts of Appeals, when a successor continues dues checkoff, this is clear and convincing evidence it has assumed the predecessor's collective bargaining agreement because, according to the Board, dues checkoff is purely a creature of an effective written contract and cannot exist in its absence. This line of cases begins in 1972 with *S-H Food Service*, 199 NLRB 95, n.2 (1972), in which the Board stated, "Checkoff, being solely a contractual obligation did not carry over as an existing term or condition of employment." The following year, in *Ekland's Sweden House Inn, Inc.*, 203 NLRB 413 (1973), the Board cited three of the successor employer's actions that directly relied on the predecessor's written collective bargaining agreement as evidence of acceptance. Continued union dues checkoff was one of those actions. *Id.* at 418. Decades later, in *U.S. Can Co.*, 305 NLRB 1127 (1992), *enf'd* 984 F.2d 864 (7th Cir. 1993), the Board stated,

> We agree with the Judge, for the reasons set forth by her, that the Respondent by its conduct adopted and became bound to its predecessor's contract. In this regard, we note particularly that the Respondent honored the union security and checkoff provisions of the predecessor's contract. These are matters which are dependent on the existence of a current contract. (citation to *S-H Food Service* omitted).

Enforcing this Board decision, the Seventh Circuit stated,

> But U.S. Can has a problem. To keep union officials happy it deducted union dues from its employees' checks and remitted the money to the union, as Continental had done, and enforced the

> union security clause of the existing agreement. Checkoff of dues and other payments from the employer to the union, like the enforcement of a union security clause, depend on the existence of a real *agreement* with the union. (Citations omitted). Otherwise the payment of money is a subvention barred by 29 U.S.C. §186(a)(2), and the requirement to join the union (or pay dues to it) coerces employees in a way forbidden by 29 U.S.C. §158(a)(3). Having done things that are lawful only if a collective bargaining agreement is enforced, U.S. Can is in a pickle.

984 F.2d at 869. (7th Cir. 1993) Another decade later, the Board stated in *Brookfield Healthcare Center*, 337 NLRB 1064, 1065 (2002),

> Second, Russell's unrebutted testimony is that the Respondent complied with all terms of the contract, which included a union security and dues checkoff provision. Because these last provisions are entirely features of a binding contract between the employer and a union, the Board has found a successor employer's continued implementation of such provisions a basis for inferring an employer's adoption of the predecessor's contract by its conduct.

Moreover, the Board has emphasized the importance of the principle that continuing dues checkoff is tied to the existence of a written collective bargaining agreement by applying a clear and convincing standard. *See Id.* at 1064. ("[T]he Board has held that a successor employer's adoption of a predecessor's contract with a union may be inferred from conduct; however, that inference must be based on clear and convincing evidence.")

These cases make evident that a dues checkoff provision necessarily is tied to a written collective bargaining agreement between the parties. This principle applies when, as here, an employer ceases dues checkoff upon union contract expiration under *Bethlehem Steel*, or when, as in the *Burns* line of cases, the reciprocal issue exists -- an employer continues dues checkoff in the absence of a written collective bargaining agreement with a union. While in the successorship context a union wants to tie the dues checkoff provision to the predecessor's contract so the successor must assume the contract, in a contract expiration context it wants the dues checkoff provision to be independent of the collective bargaining agreement. Logic dictates

it cannot have it both ways and, thus, it is not surprising that neither General Counsel nor Charging Party have addressed this line of cases. Moreover, if the Board in this case elects to overrule *Bethlehem Steel* by finding that checkoff provisions continue in the absence of an effective written collective bargaining agreement, it must necessarily overrule the *S-H Food Services, Inc.* line of cases.

3. Requiring Post-Expiration Dues Checkoff Tramples Employees' Section 7 Rights And Infringes Respondent's Freedom Of Contract

Section 7 of the Act affords to employees the right to assist a labor organization financially and the right to refrain from doing so. 29 U.S.C. §157.[7] The Section 8(a)(3) proviso is an exception to Section 7's prohibition against coerced union assistance, but that is limited to financial support in the form of dues and fees. *Communication Workers v. Beck*, 487 U.S. 735 (1988). Section 302(c)(4) reinforces employees' Section 7 and Section 8(a)(3) rights by requiring a specific written authorization that is not irrevocable beyond the collective bargaining agreement's termination date. *See, IBEW Local No. 2088,* 302 NLRB 322, 328 (1991) (holding a dues checkoff clause making checkoff irrevocable for successive annual periods violated employees' Section 7 rights); *U.S. Can*, 984 F.2d at 869 ("[T]he requirement to join the union (or pay dues to it) coerces employees in a way forbidden by 29 U.S.C. §158(a)(3).") Charging Party appears to be attempting to coerce Unit employees to pay union dues it apparently has been unable to collect from them voluntarily. General Counsel asserts the employees who have not paid union dues have done "nothing wrong." (G.C. Brief, p. 18) Consistent with their Section 7

[7] Section 7 of the Act provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)." 29 U.S.C. §157.

rights, those employees have done nothing wrong – they have exercised their statutory right to refrain from assisting the Local Union financially.

Respondent similarly has done nothing wrong. Respondent (or more accurately, its predecessor) negotiated Article IV of the CBA based on the law that existed at that time – *Bethlehem Steel* and its progeny. Such actions were consistent with one of the fundamental policies of the Act – the freedom of contract. *H.K. Porter,* 397 U.S. at 108. Consistent with that right, Respondent's predecessor negotiated Article IV, which does not contain a dues checkoff authorization. The Board has held that "[i]t is axiomatic that contract negotiations occur in the context of existing law, and, therefore, a contract provision must be read in light of the law in existence at the time the agreement was negotiated." *Hacienda Resort Hotel and Casino ("Hacienda I")*, 331 NLRB 665, 667 (2001). Not only did *Bethlehem Steel* not require Respondent to deduct union dues, the CBA the parties reached did not require it.

E. The ALJ Incorrectly Found That The Parties Admitted They Failed To Reach A Valid Impasse Prior To The Respondent's Unilateral Partial Implementation

The ALJ characterizes the General Counsel's allegations, stating as relevant here, "The government contends that USIC's unilateral refusal to continue checking off dues after the contract's expiration constituted a unilateral change in a mandatory subject of bargaining, and thus, was unlawful when, *as admitted here*, undertaken during bargaining for a new contract *without first bargaining to a valid impasse*." (ALJD p. 4) It is unclear whether the ALJ contends the General Counsel asserts Respondent made a unilateral change without the parties first reaching a valid impasse or if this is his contention. In either case, neither the law nor the record evidence support that contention. An employer can implement terms and conditions of employment only if they were "reasonably comprehended" as part of Respondent's proposals prior to impasse. *Taft Broadcasting Co., WDAF AM-FM TV*, 163 NLRB 475, 478 (1967). The

record shows that Respondent notified the Local Union of its intent to cease union dues deductions upon contract expiration at the parties' November 18, 2009 bargaining session, at which it presented to the Local Union its LBFO. (S.R. 16) The record further shows the parties did not engage in bargaining over Respondent's stated intent to cease dues deductions upon contract expiration. (S.R. 16(b)) There is no evidence the Local Union requested to bargain with Respondent concerning cessation of union dues deduction.

The record further states that, on February 2, 2010, Respondent notified the Local Union that it would implement its LBFO on March 1, 2010, and would not implement dues checkoff. (S.R. 17) Respondent's representative invited the Local Union to contact her should it desire to discuss this issue. (S.R. 17) On March 1, 2010, Respondent implemented its LBFO and the Local Union did not file an unfair labor practice charge to challenge its implementation. (S.R. 17) Thus, dues deduction cessation was "reasonably comprehended" as part of Respondent's proposals prior to implementing its LBFO upon impasse on March 1, 2010, and there is no record evidence to support the General Counsel's contention or the ALJ's finding that the parties have admitted Respondent ceased union dues deductions in the absence of an impasse. Accordingly, that finding must be overruled.

F. The ALJ Incorrectly Failed To Find Impasse When The Parties Bargained To Agreement In June 2010 Concerning Dues Deductions, The Unit Employees Failed To Ratify That Agreement, And The Union Failed To Further Request To Bargain

On June 17, 2010, Respondent and the Local Union reached agreement concerning dues deductions, including back dues payments to March 1, 2010, but on June 19, 2010, the Unit members failed to ratify that agreement. (S.R. 17) The Local Union has not made any further requests to bargain. (S.R. 17) The Respondent implemented its LBFO two years ago, over 20 months have elapsed since Unit members rejected the parties' agreement

concerning union dues, and the Local Union has not requested further to bargain. (S.R. 17) Based on these facts, the ALJ appropriately should have found that, at least at the time the Union submitted dues checkoff authorizations to Respondent for 11 Unit employees, the parties had reached a lawful impasse and, therefore, for this reason also, Respondent was free not to honor those dues checkoff authorizations.

G. The Board Should Deny General Counsel's Remedial Order

Respondent's actions were entirely consistent with the precedent established in *Bethlehem Steel* and its progeny. General Counsel, nonetheless, requests that the Board order Respondent to reimburse the Local Union with interest out of its own funds for loss of dues where employees have individually signed valid checkoff authorizations. (G.C. .Brief, p. 17)

General Counsel claims the law is ambiguous concerning who must pay the lost dues, noting that in some cases, the Board allowed the employer to deduct back dues from back pay the employer owed to individual employees and remit it to the union. (G.C. Brief, pp. 17-18) General Counsel further argues that the aim is "restoring the pre-change status quo and given that the Local Union has gone without dues as a result of the Respondent's unlawful actions, it would be inequitable at this stage to allow the Respondent to avoid its liability by deducting the back dues from employees' pay." (G.C. Brief, p. 18) General Counsel further notes that extant law permitted the Respondent's actions, yet, because it was not required to cease payroll deductions and "the question of whether dues checkoff requirements survive contract expiration has been an issue in and the subject of litigation for nearly 20 years" Respondent should have known better than to risk terminating union dues deductions. (G.C. Brief, p. 18) Finally, General Counsel claims that recoupment from the employees would undermine the Act because it would adversely affect Unit employees, who have "done nothing wrong" and who fulfilled their end of a contract with Respondent by executing checkoff

authorizations. (G.C. Brief, p. 18) General Counsel opines that the employees might blame the Local Union for the effective pay cut, undermining the Local Union's representational status and exacerbating the purported violation's harmful effects. (G.C. Brief p. 18)

None of General Counsel's contentions has merit. First, retroactively applying its position overruling *Bethlehem Steel* would create a "manifest injustice" against Respondent that should not be permitted. *See*, *Wal-Mart Stores, Inc.*, 351 NLRB 130, 134 (2007) (quoting *SNE Enterprises, Inc.*, 344 NLRB 673 (2005)). When determining whether retroactively applying a change to established law will cause "manifest injustice," the Board considers "the reliance of the parties on preexisting law, the effect of retroactivity on accomplishment of the purposes of the Act, and any particular injustice arising from retroactive application." *Wal-Mart Stores, Inc.* 351 NLRB at 134. Respondent clearly relied on the 50 years of precedent *Bethlehem Steel* and its progeny set forth when it decided to cease union dues deductions.

Retroactively applying a change in the law concerning dues deduction upon contract expiration will negatively affect the Board's ability to further the Act's purposes. As Board Members Liebman and Walsh stated in their *Dana Corporation* dissent, "[t]he ultimate object of the National Labor Relations Act, as the Supreme Court has repeatedly stated, is 'industrial peace.'" 351 NLRB 434, 444, (2007), *overruled on other grounds*. "The Board seeks to maximize and balance two sometimes competing goals, 'preserving a free employee choice of bargaining representatives, and encouraging the collective-bargaining process.'" *Id.* Allowing retroactive application to this case would only disrupt and negatively affect the employees' Section 7 free choice to the extent they have chosen not to continue to support the Union financially.

"While the Act gives the Board broad discretion when it comes to fashioning remedies for unfair labor practices, the operative word is 'remedies,' and Board orders which are merely punitive in character will be struck down for that reason." *Miramar Hotel Corporation d/b/a Miramar Sheraton Hotel*, 336 NLRB 1203, 1243 (2001) (citing *Republic Steel Corp.*, 311 U.S. 7, 11-12 (1940)). There is no precedent requiring an employer to pay dues to a union out of its own assets. In this case, such an order would be particularly punitive, as not only is the remedy the General Counsel seeks punitive, Respondent never had an obligation to deduct and remit union dues under the well established *Bethlehem Steel* precedent or under the CBA. Thus, in this case, imposing such a punitive remedy would be particularly unjust.[8]

Further, requiring Respondent to pay union dues on Unit employees' behalf creates for those employees a windfall to which they are not entitled. In *Ogle Protection Services, Inc.*, 183 NLRB 682, 683 (1970), a decision General Counsel cites to support its position, the Board found that the employer must reimburse the union for unpaid dues after unlawfully ceasing dues checkoff, but such monies would be offset against back pay owed due to another unfair labor practice. The Board, responding to General Counsel's request for a particular back pay calculation, rejected the requested remedy, stating, "[S]uch a remedy would result in a windfall to some employees, who would now benefit from having their employer remit their accrued dues to the union, without ever having had these amounts deducted from their pay." 183 NLRB at 683. That is precisely the case here.

Moreover, Section 302(c)(4) is the provision that allows an employer to deduct union dues from employees' wages and remit them to their exclusive collective bargaining representative. But the Act does not provide for these monies to be paid by the employer or any

[8] In *Hacienda Hotel, Inc. ("Hacienda III),* 355 NLRB No. 154 (2010), Members Schaumber and Hayes, concurring, stated, [t]he Respondent's conduct was lawful under our clearly articulated precedent and imposing sanctions at this point would work a manifest injustice."

other party. Section 302(c)(4) is designed to ensure that the employees, not the employer or the union, expresses their desire to pay union dues. In fact, the Administrative Law Judge, whose opinion the Board adopted in *Ogle Protection Services, Inc.*, stated, "To require the Respondents to pay dues to the Union without reimbursement from the employees would appear to be in direct contravention of Section 302 of the Act which restricts payments to employee representatives to certain narrowly defined types of payment but aside from that consideration I do not believe that such an order is justifiable under the circumstances herein. If there is any one aspect of backpay that the courts have rendered ultimately clear it is that the employer may not be assessed a 'punitive' payment." *Id.* at 690. If the Board retroactively applies dues deduction by requiring Respondent to pay union dues to the Local Union in this case, such actions will be punitive and inconsistent with the principles of the Act.

General Counsel cites *YWCA of Western Massachusetts*, 349 NLRB 762 (2007) and *Plymouth Court*, 341 NLRB 363 (2004) for the proposition that unremitted dues may be paid from an employer's own funds. However, both cases are inapposite. In both cases, the Board found the employers violated Section 8(a)(5) by either refusing to sign an agreed-upon contract or by illegally withdrawing union recognition. No such finding exists here. Moreover, in *YWCA*, the Board adopted the Administrative Law Judge's remedial order requiring the employer to remit dues in accordance with *Ogle's* offset holding. 349 NLRB at 780. General Counsel fails to mention *Bebley Enterprises, Inc.*, 356 NLRB No. 64, slip op. at 2 (2010), in which the Board found the employer unlawfully repudiated the collective bargaining agreement and ceased dues checkoff, ordering, "[i]n order to remedy the Respondent's failure to deduct employee union dues as required by the agreement, we shall order the Respondent to deduct and remit union dues pursuant to valid checkoff authorizations." Given that the Board issued the

Bebley order to remedy a violation of the Act for which there was long-standing precedent, yet refrained from requiring the employer to pay money to the union from its own assets, it is evident that the Board does not believe it has the authority to impose such a remedy.

Furthermore, General Counsel's contention that Respondent should have known better than to risk ceasing union dues deductions because the issue has been litigated for 20 years is simply ludicrous. The precedent on which Respondent relied is 50 years old. Nothing had changed with respect to the *Bethlehem Steel* principles during that 50-year period, including during the last 20 years when the Board has considered its *Hacienda I, II and III* decisions. And the dissents in these cases did not put Respondent on notice that *Bethlehem Steel* was no longer good law; to the contrary, *Bethlehem Steel* is the law. In addition, in *Levitz Furniture Company of the Pacific, Inc.*, 333 NLRB 717, 729 (2001), the Board expressly declined to retroactively apply a new standard concerning unilateral withdrawal of recognition, explaining that employers did not have "adequate warning" of the change in Board law. Accordingly, the Board should decline to apply retroactively any change in the law until those affected have been given sufficient notice.

Moreover, there is nothing inequitable about requiring Unit employees to pay the Local Union back dues. Presumably, some Unit employees have paid the Local Union dues of their own volition. It would not be fair to them to have Respondent pay the Local Union dues on others' behalf but not on their behalf. It similarly would be unfair for the Local Union to obtain a windfall by having Respondent pay the Local Union dues for all Unit employees, including those who have already paid dues to the Local Union. In addition, for more than two years, Unit employees have enjoyed the use and investment power of the additional monies they have retained that otherwise would have been deducted and remitted to the Local Union.

General Counsel further assert that the Unit employees "did nothing wrong" because they executed a payroll deduction authorization form and, therefore, requiring them to pay their own dues would unfairly adversely affect them. But Unit employees presumably had an obligation as Union members to pay dues to the Local Union and have incurred a windfall for two years because the Union has continued to represent them without their paying for that representation. This may mean they, in fact, did do something wrong. Moreover, Respondent bargained in good faith with the Local Union and reached an agreement with them nearly two years ago, including back dues to March 1, 2010, but Unit employees rejected it. (S.R. 17) The Board should not hold Respondent responsible for dues payments the Unit employees were unwilling to pay.

General Counsel laments the fact that the "Local Union has gone without dues as a result of the Respondent's unlawful actions" since December 4, 2009. (G.C. Brief, p. 18) However, the Local Union could have filed an unfair labor practice charge challenging Respondents discontinuance of union dues deductions within six months of December 4, 2009, when the alleged unfair labor practice charge, union dues deduction cessation, occurred. Yet it did not. Thus, it bears some responsibility for the extended period in which it has not received dues from Unit employees.

In addition, as is the case here, not all collective bargaining agreements contain a provision requiring that the employer deduct and remit union dues to their employees' collective bargaining representative. Those employees and their union are, thus, required to determine the best manner in which to ensure bargaining unit employees pay their union dues. That is not Respondent's obligation and the Unit employees and Local Union's failure over the past two

years to determine a means to collect union dues outside a payroll deduction system is their fault, not Respondent's fault.

General Counsel's conjecture that the employees might blame the Local Union for the effective pay cut associated with their having to pay union dues for union representation they received over the past two years, thus undermining the Local Union's representational status and exacerbating the purported violation's harmful effects, is completely unfounded. The Local Union will merely recoup now what it should have been collecting from Unit employees all along. The "pay cut" Unit employees will experience if the Board orders employees to pay the Local Union will be precisely that for which the Local Union claims it bargained on Unit employees' behalf during bargaining for the purported dues checkoff provision contained in the now-expired collective bargaining agreement. Thus, collecting those monies now should not harm the Local Union's representational status.

Finally, while General Counsel did not expressly address this point, with respect to any remedy, the Board may not lawfully impose any penalty back to December 4, 2009, as Charging Party failed timely to file an unfair labor practice charge within six months following that date. While no remedy is warranted, should the Board impose a penalty on Respondent, pursuant to Section 8(a)(3) of the Act, it may not do so retroactively beyond December 7, 2010, which is six months prior to the date Charging Party filed the instant charge.

VI. CONCLUSION

For all the reasons discussed above, Respondent USIC Locating Services, Inc. respectfully requests that the Board adopt the ALJ's Decision dismissing the Complaint.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP[9]

By: Cynthia K. Springer

Cynthia K. Springer
300 North Meridian Street
Suite 2700
Indianapolis, Indiana 46204
(317) 237-0300

Attorneys for Employer

[9] Effective January 1, 2012, Baker & Daniels LLP became Faegre Baker Daniels LLP.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2012, a true and correct copy of the foregoing document was served via email to the following parties of record:

Julie Stern
Counsel for the Acting General Counsel
Region Six, National Labor Relations Board
1000 Liberty Street, Room 904
Pittsburgh, PA 15222
Email: Julie.Stern@nlrb.gov

Jonathan Walters
Counsel for the Charging Party
Markowitz & Richman
121 S. Broad Street, 11th Floor
Philadelphia, PA 19107
Email: jwalters@markowitzandrichman.com

Cynthia K. Springer