UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

MI PUEBLO FOODS

and **Case 32-CA-25677**

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 853, A/W
CHANGE TO WIN

ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

On February 9, 2012, Administrative Law Judge Eleanor Laws, herein called the Judge, issued her Decision in this matter, finding that Respondent violated Section 8(a)(5) and (1) of the Act by various acts and conduct. However, the Judge failed to find that certain other acts and conduct by Respondent also alleged to be unlawful similarly violated the Act. In addition the Judge's Conclusion of Law fail to clearly reflect her finding that Respondent failed to bargain over its decisions to change its delivery schedules and consolidate routes, to subcontract out backhauls and pickups, and to layoff six bargaining unit employees Accordingly, Counsel for Acting General Counsel hereby files the following cross-exceptions to the Judge's findings, conclusions of law, recommended remedy and recommended order.

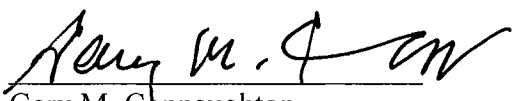
No.	Page	Line	Exception
1.	20	8-11	To the Judge's finding that Respondent's subcontracting the work of delivering Unified products from its distribution center (DC) to its retail stores was not a material, substantial and significant change to the terms and conditions of bargaining unit drivers' employment.
2.	20	30-36	To the Judge's finding that the Acting General Counsel did not prove that the volume of the deliveries made by

			bargaining unit drivers changed as the result of Respondent's subcontracting the work of delivering Unified products from its DC to its retail stores.
3.	20-21	20:38-41 21: 1-23	To the Judge's finding that the Board's holding in *Overnite Transportation Co.*, 330 NLRB 1275 (2000) was not applicable to Respondent's subcontracting the work of delivering Unified products from its DC to its retail stores.
4.	21	1-2	To the Judge's finding that Respondent's subcontracting of the bargaining unit work of delivering Unified products from its DC to its retail stores did not amount to the substitution of one group of drivers for another to perform the same work.
5.	21	10-23	To the Judge's finding that the potential loss of additional work resulting from Respondent's subcontracting the work of delivering Unified products from its DC to its retail stores was not significant under the facts of this case.
6.	21	18-23	To the Judge's finding that Respondent's distribution center was operating at full capacity both before and after Respondent subcontracted the work of delivering Unified products from its DC to its retail stores.
7.	passim	passim	To the Judge's failure to find that Respondent's subcontracting of the work of delivering Unified products from its DC to its retail stores violated Section 8(a)(5) and (1) of the Act.
8.	22	4-11	To the Judge's failure to include in her Conclusion of Law No. 5, that Respondents subcontracting of the delivery of Unified products from the DC to its retail stores violated the Act
9.	22	4-11	To the Judge's apparently inadvertent failure to include in her Conclusions of Law No. 5 that by the unilateral changes listed therein Respondent violated Section 8(a)(5) and (1) by failing to bargain over the decisions to make the listed changes, as well as the effects of the changes.
10.	22		To the Judge's failure to include in her recommended remedy that Respondent be ordered to restore the status quo ante by rescinding the subcontracting of the delivery of Unified products from the DC to its retails stores and restoring cross-docking as it existed prior to April 2011.

11.	23		To the Judge's failure to include in her recommended order that Respondent cease and desist from subcontracting out the unit work of delivering Unified products from its DC to its retail stores.
12.	23-24		To the Judge's failure to include in her recommended order that Respondent take affirmative action to rescind the subcontracting of the delivery of Unified products from the its DC to its retail stores.

DATED AT Oakland, California this 18th day of April 2012.

Respectfully submitted,



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MI PUEBLO FOODS **and** **INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 853, A/W CHANGE TO WIN**	**Case(s) 32-CA-025677**

AFFIDAVIT OF SERVICE OF ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

I, the undersigned employee of the National Labor Relations Board, state under oath that on **April 18, 2012,** I served the above-entitled document(s) *electronically*, upon the following persons, addressed to them at the following addresses:

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April 18, 2012
Date

Frances Hayden, Designated Agent of NLRB
Name

Frances Hayden
Signature