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

In the Matter of:	:	
	:	
GRAPHIC COMMUNICATIONS CONFERENCE/INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 137C, (OFFSET PAPERBACK MFRS., INC.),	:	CASE NO. 4-CB-010663
Respondent,	:	
and	:	
BOBBIE JO STONIER, An Individual,	:	
Charging Party.	:	

RESPONDENT'S BRIEF IN SUPPORT OF ITS
EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

AND NOW COMES the Respondent, Graphic Communications Conference/International Brotherhood of Teamsters, Local 137C, by and through its attorneys, IRA H. WEINSTOCK, P.C., in accordance with Section 102.46 of the Board's Rules and Regulations, and files the following Brief in Support of its Exceptions to the Findings, Conclusions and Recommendations of Administrative Law Judge Michael A. Rosas (ALJ):

STATEMENT OF THE CASE

The General Counsel claimed that the Union engaged in unlawful threats to employees in violation of Section 8(b)(1)(A). On or about October 27, 2011, the Regional Director issued a

letter approving the withdrawal of the majority of the charge in the case. Only two allegations remained.

The first instance was alleged to have taken place on March 31, 2011 by Union President John Brown. The Charging Party claimed that he threatened to remove her from a grievance if she did not stop raising complaints about temps working in the plant.

The second instance allegedly occurred on April 26, 2011 by Union Chapel Chair Michael Timek at two meetings. The Charging Party alleges that Mr. Timek warned against employees talking to other employees about union-related matters. A recount of the testimony relevant to the findings and conclusions at issue follows.

Vanessa Sue Burkhardt, opened her testimony with an unsolicited insult of Mr. Timek. (N.T. 2/6/2012 at p. 19). She testified regarding a meeting alleged to have taken place on April 26, 2011, where she claimed that Mr. Timek said that he was the only one who could conduct Union business, and warned of charges liable to be brought up. (*Id*. at 21). However, she had earlier admitted that she didn't understand what Mr. Timek said at the meeting. (*Id*. at 20). She further admitted that Ms. Stonier ran against Mr. Timek in an election and lost, that she did not recall the date of the meeting that she was addressing in her testimony, and that Mr. Timek's statements at the meeting addressed the code of conduct, which is part of the contract. The code of conduct contains sections addressing libel and wasting time, which were the items that concerned Mr. Timek and giving rise to the meeting. (*Id.* at 27-28; *Id*. at 41).

She admitted that she did not even look at the code of conduct. (*Id*. at 32). She admitted that she couldn't remember who was sitting around her. (*Id*. at 34). When asked what Mr. Timek was telling them about the work rules, she responded: "I don't think I know. I don't even

know what was going on to tell you the truth." (*Id*. at 47). She admitted that Mr. Timek never filed charges or requested that anyone be discharged for talking about union business (*Id*. at 38), and that the meeting merely was to inform members that employees should go through the proper channels, and that he didn't want people talking about Union business on company time (*Id*. at 37), a wholly reasonable concern given the code of conduct's provisions regarding wasting time and making false, vicious or malicious statements concerning other employees.

Robert Lee Shupp testified that Mr. Timek handed out copies of the harassment policy and warned against harassment and doing business on company time. He acknowledged that a purpose of the meeting was to discuss harassment among employees, and that Mr. Timek addressed the issue by requesting that if a person had a complaint about another employee, the person should come to him as Chapel Chairman and he would process it. (*Id*. at 54-55).

Mr. Shupp admitted that Ms. Stonier was not at the same meeting he attended, and noted that Ms. Burkhardt was at the same meeting he attended. (*Id*. at 56-57). Mr. Shupp also understood that Mr Timek had no authority to fire anybody and that no charges had been filed against anyone. (*Id*. at 58).

Austin Jacob Knight was a short-term fill-in employee working at the plant for only several months. (*Id*. at 61). He claimed that Mr. Timek warned against discussing Union business with temporary employees, but acknowledged that such employees were not even employees of Offset and were employed by a temporary agency, and there would be no reason to discuss Union business with those people. (*Id*. at 68-69). He admitted that Mr. Timek was addressing potential violations of the work rules and warning that violation of the work rules can result in discipline, as well as the fact that he was just repeating the work rules. (*Id*. at 72).

Scott Kevin Griffith, Sr. testified that he is a Chapel Chair in the Prep Department, a different department in the facility than that for which Mr. Timek is Chapel Chair. He claimed that Bobbie Jo Stonier is part of a class action grievance regarding transfers and that she was one of seven people who filed the grievance. (*Id*. at 91). He claimed to have a conversation with Mr. Brown in March of 2011, in which he alleged that Mr. Timek told him that he was going to drop her from the grievance if she did not stop complaining about temporary employees. (*Id*. at 92).

Mr. Griffith admitted that he ran against Mr. Brown in the election and that he is a very close friend of Ms. Stonier. (*Id*. at 94). She has filed eight or more grievances in the last couple years, and "numerous" NLRB charges, as well as EEOC charges against the Company. (*Id*. at 94-95). At no point could counsel for the Acting General Counsel or the witness produce any class action grievance to which she was a party from the relevant time period. In fact, the only class action grievance to which she was a party was dated two months *after* the conversation Mr. Griffith alleged. (*Id*. at 111). The only class action grievance from the relevant time period was not signed by her and did not list her name in the first place.

Bobbie Jo Stonier, the Charging Party, testified that she was laid off in early 2010 and recalled in late November or early December 2010. (*Id*. at 121). On January 4, 2010, she transferred to the Laflin plant. (*Id*. at 122). She claimed that Mr. Brown threatened to have her removed from "the class action suit" if she kept bringing up things that were going on at DPS. (*Id*. at 125). When asked if he used the word "suit" as opposed to grievance, she confirmed that he said "[c]lass action suit." (*Id*.). Later, when asked to clarify the same point, she claimed that he used the words "class action grievance." (*Id*. at 126).

Next, Ms. Stonier testified about the meeting that took place on April 26, 2011. (*Id*. at 148). She testified that Mr. Timek called the meeting, reminded them of their oath of membership, and addressed company rules and the company's code of conduct, and handed out papers with both. (*Id*. at 150; GC-4). When asked about events at the meeting, she stated that they were told that they cannot harass, intimidate, coerce, call people names, talk about people, and make false statements about people. (*Id*. at 151). She also claimed that Mr. Timek said that people could be fired for making false statements, intimidating or harassing employees. (*Id*. at 151-152). The only witness at the hearings in this matter that she identified as being at the same meeting in April was Austin Knight. (*Id*. at 182).

Ms. Stonier admitted filing up to ten grievances in the last three years, in addition to five or six NLRB charges. (*Id*. at 158). She also filed EEOC charges against the Company and the Union. (*Id*. at 158-159). She is also going to court to protest her loss in an election for recording secretary. (*Id*. at 159).

Presented with a class action grievance (R-2), she admitted that her name is not on the grievance. (*Id*. at 162). Moreover, she would not have been at work during the time period that the grievance was filed. (*Id*. at 162-163). She had an individual grievance on the subject. (R-4; *Id*. at 167). Her testimony indicates that she had no reason to consider that she was part of the class action grievance before the same conversation in which she claimed Mr. Brown threatened to remove her from the class action grievance. (*Id*. at 169-170). After claiming that she did not recall whether or not receiving any phone calls at all from Mr. Brown in March of 2011, she needed to be reminded that the very subject of her allegations in the instant proceeding was a

March 2011 phone call from Mr. Brown. (*Id*. at 174). Then, she claimed to have called him and he called her back. (*Id*. at 175).

Michael Timek testified that he works as a printer assistant and is also Chapel Chairman at DPS. (*Id*. at 198). He held three meetings in April 2011, one for each shift. (*Id*.). The purpose of the meetings was to protect the employees from violating the code of conduct and contract, with the possible disciplinary repercussions pursuant to them, in the face of increasing employee bickering. (*Id*. at 199). In the meetings, he discussed that there was some conflict between employees, and that the code of conduct and union policies must be followed because he didn't want anybody to get reprimanded in any form by the Company. (*Id*. at 200-201). He handed out the Company's code of conduct and the rules from the contract. (*Id*. at 200). This occurred in each of the three meetings. (*Id*. at 200-203). At no point in time in the meetings did he ever threaten any employees. (*Id*. at 204). He did not tell the employees that he was the only one who could conduct union business. (*Id*. at 217). Rather, he offered to talk with each union employee if there were problems between employees and, if the matter cannot be settled, the grievance procedure would be utilized. (*Id*. at 200). Vanessa Burkhardt attended the day shift meeting, which would be second shift. (*Id*. at 217).

John Brown testified that he has worked at Offset since 1974 and became Union President in January of 2010. (*Id*. at 221). In November 2011, Scott Griffith ran against him and lost. (*Id*.). Bobbie Jo Stonier ran for recording secretary against Janine Daily and lost. (*Id*. at 221). Mr. Brown represents just over 800 employees at several companies, including the approximate 475 employees at Offset. (*Id*. at 222). Mr. Brown addressed a telephone conversation with Ms. Stonier, who asked questions about temporary employees. (*Id*. at 224).

He was informed that there were no temporary employees working in the prep room at that time and called her back to tell her that was the information he received. (*Id*.). At the time of the conversations, he was not aware of any class action grievances in which Ms. Stonier was involved. (*Id*.). At the time, there was one class action grievance pending, but she hadn't signed onto it. (*Id*. at 224-225). At no point in time did he ever threaten to remove her name from any class action grievance. (*Id*. at 225).

The Decision of the Administrative Law Judge, dated May 17, 2012, concluded that the Union engaged in unfair labor practices by threatening an employee in March 2011 and by threatening employees on April 26, 2011. The Union files the instant Exceptions and Brief.

QUESTIONS INVOLVED

I. Whether the Administrative Law Judge erred in the Findings of Fact contained in pages 6 through 9 of the Decision as enumerated in Exceptions 1 through 4?

II. Whether Administrative Law Judge erred in Conclusion of Law number 3, stating that the Union engaged in unlawful threats to employees in violation of Section 8(b)(1)(A), as enumerated in Exception 5?

ARGUMENT

I. THE ADMINISTRATIVE LAW JUDGE ERRED IN THE FINDINGS OF FACT CONTAINED IN PAGES 6 THROUGH 9 OF THE DECISION AS ENUMERATED IN EXCEPTIONS 1 THROUGH 4.

The ALJ's Findings of Fact which form the basis of the conclusions, disregard the inconsistency even if the testimony was found credible. For instance, the first Finding of Fact

required to reach a conclusion that threats were made was that mixed signals were sent as to whether the Charging Party's grievance was part of a class action, as a result of having treated her individual grievance as if it were consolidated with the February class action. (Decision at pp. 5-6).

No testimony indicated mixed signals as having been sent as to whether the grievance was part of a class action. The Charging Party testified (not as to any mixed signal) that she was, in fact, part of a class action, until presented with the grievance itself, which established that she had filed individually and not at all as part of the class. Lacking testimony of "mixed signals," the ALJ relies on the fact that the grievances were later consolidated into one arbitration proceeding, as they dealt with similar issues. However, the exhibit relied upon clearly lists her grievance and with her name and its own number separately.

Moreover, the Charging Party could not (and did not) credibly claim to have been confused by this. Her testimony that she had filed numerous grievances and NLRB charges in the past, and ran for high office within the Union establishes that she was a person who knew, or should have known, based on experience, the difference between being part of a class action grievance and an individual grievance, as well as the difference between being part of a class as opposed to simply being in a consolidated arbitration proceeding.

Finally, even if operating under a faulty assumption that the grievances were somehow merged into a class, dropping her from the class would only result in her individual grievance on the issue being processed and arbitrated separately from the other similar grievances. Therefore, the asserted "threat," if it could have been implemented, would have resulted in more

individualized attention, treatment, and expense, and cannot logically, as a result, be viewed as a credible threat at all by someone of the Charging Party's experience and sophistication.

Without this finding erroneously relying upon "mixed signals," any finding of fact that Brown could have, and therefore did, credibly threaten to remove Stonier from the "class action suit," and Conclusion of Law number 3 as it refers to threatened removal from a class action grievance fails as well.

The second portion of the relevant conclusion of law (No. 3) relies upon the Finding of Fact on pages 8-9 of the Decision that Timek threatened employees at the April 26 meeting. The ALJ determined that "[u]nder the circumstances, Timek's remarks to employee-members on April 26, which reasonably could have been interpreted as a threat if they engaged in Section 7 activities, violated Section 8(b)(1)(A)." (Decision at p. 11). The "circumstances," as found by the ALJ were that there "was no evidence of concern" about "conflicts among employees in the prep department." (*Id*.). To the contrary, the transcript was rife with testimony about conflicts among employees as the very reason for the meetings. Even the ALJ's Decision, three pages prior to the above conclusion that there "was no evidence of concern," inadvertently cites to evidence of concern regarding relations between employees, not only expressed by Timek, but acknowledged by Burkhardt. (Decision at p. 8 ("Realizing that Timek was referring to complaints by some about the starting time of Sullivan….")).

The "circumstances" giving rise to the meeting was clearly strife between employees, and worry on the part of the Union that its members could be disciplined under the Company's Rules. This is further evidenced in that the highlighted Rule of Concern was Rule 15, which forbids false, vicious, or malicious statements concerning employees. A holding that these

"circumstances" constitute a threat for engaging in Section 7 activities effectively forbids unions from advising employees about employer rules and warn of potential employer enforcement of rules in their efforts to protect their members from discipline. Undoubtedly the same employees would be the first to complain if the Company took action against them and the Union had failed to warn them.

II. THE ADMINISTRATIVE LAW JUDGE ERRED IN CONCLUSION OF LAW NUMBER 3, STATING THAT THE UNION ENGAGED IN UNLAWFUL THREATS TO EMPLOYEES IN VIOLATION OF SECTION 8(B)(1)(A), AS ENUMERATED IN EXCEPTION 5.

Section 8(b)(1)(A) states that "it shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in [Section 7]." The subsequent proviso states that nothing in Section 8(b)(1)(A) shall "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 29 U.S.C. § 158(b)(1)(A).

Section 8(b)(1)(A) and its proviso envision a balancing of the rights of the union against the rights of employees and members on a case by case basis. Some union practices which are inherently coercive under Section 8(b)(1)(A) such as fining or expulsion, are permissible under the proviso if they are within the legitimate interests of the union and do not contravene any other public policy enunciated in the Act. *Scofield v. N.L.R.B.*, 394 U.S. 423, 89 S.Ct. 1154, 22 L.Ed.2d 385 (1969); *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 87 S.Ct. 2001, 18 L.Ed.2d 1123 (1967).

Section 8(b)(1)(A) parallels 8(a)(1), which makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees" in the exercise of rights guaranteed in Section 7 of the Act. *Lee v. N.L.R.B.*, 393 F.3d 491, 494 (fn.1) (4th Cir. 2005).

The propriety or impropriety of conduct alleged must be judged in the light of all the circumstances of the case to ascertain whether it was, in fact, coercive or otherwise in violation of the law. Such conduct "must be of such a nature as to indicate a *realistic* possibility that employee coercion thereby is likely to result." *N.L.R.B. v. Monroe Tube Co.*, 545 F.2d 1320, 1327 (2nd Cir. 1976) (emphasis added). Relief may be denied where a violation is found to be *de minimus* in nature. *N.L.R.B. v. Copes-Vulcan, Inc*., 611 F.2d 440, 443 (3rd Cir. 1979) (citing 29 U.S.C. § 158(c) (1973); *N.L.R.B. v. McCormick Steel Co*., 381 F.2d 88, 91 (5th Cir. 1967); *Firestone Synthetic Fibers Company v. N.L.R.B.*, 374 F.2d 211, 213-215 (4th Cir. 1967).

The first section of Conclusion of Law number 3 asserts that the Union engaged in unfair labor practices by threatening the Charging Party to remove the employee from a class action grievance. In the first place, as she was not a party to a class action grievance, even if the Charging Party could otherwise be believed, this could not be viewed reasonably as a threat. Additionally, the net effect of implementing that alleged threat would have been for the Charging Party to have more time, expenditures, and effort devoted to her grievance and arbitration as a stand-alone action. It would be completely unreasonable for someone of her sophistication and her experience in filing grievances and charges to view such action as a threat.

A union can avoid liability for the acts of its agents if it effectively repudiates their conduct. *Communications Workers of America, Local 9431*, 304 N.L.R.B. No. 54, 138 L.R.R.M.(BNA) 1483 (1991); *East Texas Motor Freight*, 262 N.L.R.B. No. 101, 110

L.R.R.M.(BNA) 1547 (1982). Assuming *arguendo* that any threat was made not to follow through with an individual grievance by Ms. Stonier (inasmuch as the evidence establishes a complete absence of any potentially relevant class action grievance to which she was a party), by pursuing the grievance through arbitration, the Union would have effectively repudiated any conduct indicating the opposite.

The second section of Conclusion of Law number 3 asserts that the Union engaged in unfair labor practices by threatening employees on April 26, 2011 with intraunion discipline by the Union and discharge by the Company. As noted above, this conclusion is without a factual basis in the evidence. Mr. Timek held meetings to attempt to quell tensions among members and to protect the members from potential Company discipline pursuant to the negotiated code of conduct. In this case of no good deed going unpunished, Mr. Timek merely distributed and vocalized factual information out of concern for the welfare of the members, who, he felt, were unnecessarily putting themselves at risk of discipline because, should the talk about employees have continued or escalated, the Company could have exercised its power under the code of conduct to terminate or otherwise discipline them.

There is no realistic possibility that employee coercion was likely to result, as all witnesses acknowledged that lack of any past Union charges or action or indication of any propensity to take such action. The testimony uniformly established that purpose of the meetings was to address potential violations of the work rules and warn that violation of the work rules can result in discipline, as well as the fact that he was just repeating the work rules. Again, this is far more corroborative of expressions of concern for employees than any statement having the tendency or likely effect of a threat, intimidation or coercion.

CONCLUSION

For all the aforementioned reasons, the Respondent respectfully requests that its exceptions be granted.

Respectfully Submitted,

IRA H. WEINSTOCK, P.C.
800 North Second Street
Harrisburg, PA 17102
Phone: 717-238-1657

Ira H. Weinstock

Digitally signed by Ira H. Weinstock
DN: CN = Ira H. Weinstock, C = US, O = IRA H. WEINSTOCK, P.C.
Date: 2012.06.13 11:18:28 -04'00'

By:_____
IRA H. WEINSTOCK

CERTIFICATE OF SERVICE

AND NOW, this 13th day of June, 2012, I, Ira H. Weinstock, Esquire, attorney for Respondent, Graphic Communications Conference/International Brotherhood of Teamsters Local 137C, hereby certify that I served the within **RESPONDENT'S BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** this day by electronic mail to:

David Faye, Esquire
(David.Faye@nlrb.gov)
National Labor Relations Board
One Independence Mall
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106
(Counsel for the General Counsel)

Bobbie Jo. Stonier, Pro Se
(stoniersolt3043@aol.com)
523 SR 219 East
Tunkhannock, PA 18657

Linda Dwoskin, Esquire
(Linda.dwoskin@dechert.com)
Dechert, LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

Ira H. Weinstock
Digitally signed by Ira H. Weinstock
DN: CN = Ira H. Weinstock, C = US, O = IRA H. WEINSTOCK, P.C.
Date: 2012.06.13 11:18:50 -04'00'

By:_____
IRA H. WEINSTOCK