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10 UNITED STATES OF AMERICA  
11 BEFORE THE NATIONAL LABOR RELATIONS BOARD

12 LABORERS'INTERNATIONAL UNION  
13 OF NORTH AMERICA, LOCAL 872,

14 Respondent /Union

15 And

16 STEPHANIE SHELBY, an individual

17 Charging Party

Nos. 28-CB-065507

**EXCEPTIONS TO THE DECISION OF  
THE ADMINISTRATIVE LAW JUDGE**

18 Charging Party hereby takes the following exceptions to the Decision of the Administrative  
19 Law Judge (ALJ):

- 20 Exception 1 P.2:44-48 The Charging Party failed to properly serve the Motion to  
Quash and the Motion should have been granted  
notwithstanding the fact that no opposition was filed.
- 21 Exception 2 P. 8:47-52 Any clerical worker who was accosted with the kind of  
22 language used by Ms. Shelby would to some degree feel  
intimidated or threatened. One can never predict for sure when  
23 this kind of conduct won't lead to a more violent response. The  
Union acted appropriately to a violent or potentially violent  
24 act. Ms. Lucero's impression does not constitute an objective  
standard that Ms. Shelby would not repeat her threatening  
outburst.
- 25 Exception 3 P.10:42-59 The CD records in the background Ms. Shelby's extreme anger  
26 and inappropriate behavior. The Board should listen to the CD  
itself. No transcript could be prepared because Ms. Shelby's  
27 words are indecipherable when she is yelling and screaming in  
the background of the tape. The tape confirms that Ms. Shelby  
28 was out of control and swearing consistently at Mr. Taylor.

- 1 Exception 4 P.4:28-31 The ALJ fails to recognize that it was the Las Vegas Police  
2 who asked Mr. Taylor to “trespass” Ms. Shelby in order for  
3 them to have the authority to remove her at that time. Mr.  
4 Taylor did not ask for any limitation on her subsequent efforts  
5 to visit the Union’s hall.
- 6 Exception 5 P.11:1-3 Mr. Taylor understood the trespass notice only because it was  
7 the police who informed him that she could not come back to  
8 the hall unescorted. The police request the form of the no-tress  
9 order in order to remove here on Oct 4.
- 10 Exception 6 P.11:14-22 Ms. Shelby called the hall but did not speak to Ms. Lucero; she  
11 spoke to Mr. Thienes. Ms. Shelby has never apologized to Ms.  
12 Lucero.
- 13 Exception 7 P.11:40-52 Mr. Taylor only understood the scope of the no trespass order  
14 because the police used a preprinted form and request Mr.  
15 Taylor to read it to Ms. Shelby. He did not testify that it was  
16 permanent and irrevocable. He understood that it was ongoing  
17 and that is the context of all of his testimony.
- 18 Exception 8 P.13:30-31 Ms. Shelby did not calm down “immediately when the police  
19 arrived.” She only calmed down after she was handcuffed and  
20 the police told her that she had to calm down before she could  
21 drive home.
- 22 Exception 9 P.13:30-34 Mr. Taylor understood that she had to bring a police escort but  
23 did not understand that the directive requested by the police  
24 was irrevocable or permanent.
- 25 Exception 10 P.13:37-43 There has been no impact on Ms. Shelby’s employment since  
26 she has worked continuously through the date of hearing.  
27 Respondent conceded that in the future it would be the  
28 slightest inconvenience but not interference.
- Exception 11 P.13:43-44 The positions raised in the brief all of which are not precisely  
accurately quoted or referred to, do not reflect upon the  
veracity of witnesses. The Judge may reject some of the  
arguments but that doesn’t go to the “veracity of its positions.
- Exception 12 P.15:13-24 The ALJ to recognize that Ms. Shelby’s conduct went well  
beyond the kind of confrontation found protected in *Atlantic  
Steel* and subsequent cases.
- Exception 13 P.15:34-40 “The record does not reveal that ... were a common  
occurrence...”
- Exception 14 P.16:17-24 Respondent agrees that in the future there may be some  
inconvenience, however very slight, but no interference.

- 1 Exception 15 P.16;28-35 Respondent repeatedly reminds the Board that the no trespass  
2 order was not irrevocable nor permanent. Ms. Shelby in fact  
3 was not prohibited from coming back to the hall for legitimate  
4 business. It could be revoked if Ms. Shelby had made such a  
5 request.
- 6 Exception 16 P.16:37-40 The fact that Ms. Lucero's husband is a Las Vegas Police man  
7 is irrelevant and there is no evidence that that had any impact  
8 upon the way the police would treat this case.
- 9 Exception 17 P.16:40-45 Respondent does not concede that this rule interferes with Ms.  
10 Shelby's ability to appear and to gain access to the out of work  
11 list. She has the right to do so.
- 12 Exception 18 P. 17:1-10 The access rule imposed on Ms. Shelby because of her  
13 unprotected conduct does not interfere with her employment.  
14 Respondent concedes however that it does have the impact of  
15 reminding members that they can't engage in profanity  
16 directed at the dispatchers. The Union has every right to make  
17 it plain that such profanity is unprotected and will result in  
18 appropriate action.
- 19 Exception 19 P.17:12-18 Ms. Shelby never asked for the police escort requirement to be  
20 rescinded. Unless she requested it the Respondent did not  
21 violate the Act by not rescinding it. Because as the ALJ found,  
22 removing her from the hall through the use of the no trespass  
23 order on October 4 did not violate the Act.
- 24 Exception 20 P.18:4-22 The police escort requirement which is not a no-trespass order  
25 has not interfered with Ms. Shelby's ability to work or to seek  
26 work.
- 27 Exception 21 P.18:18-22 The ALJ is correct that at some point the passage of time may  
28 render the police escort requirement unnecessary but that  
statement which we believe to be correct reflects the status at  
some future time, not at the time the complaint issued or the  
time of the trial.
- Exception 22 P. 18:24-30 The Union did have a legitimate reason to limit Ms. Shelby's  
access after the October 4 incident for at least some time.  
Contrary to the suggestion of the ALJ, the Union did have a  
legitimate reason to impose some restriction given the nature  
of Ms. Shelby's uncontrolled behavior on October 4
- Exception 23 P. 18:33-38 Ms. Shelby's conduct warrants the imposition of some  
restriction of her access for some period of time. The Union's  
access rule which was not irrevocable was not so far outside a  
wide range of reasonableness as to be irrational.
- Exception 24 P. 18:40-19:6 The Union's conduct was rational in that the police imposed  
the no trespass order in order to effectuate Ms. Shelby's  
removal during her uncontrolled behavior on October 4.

1	Exception 25	P.19:14-18	To the conclusion of law number 2. Among other reasons Ms. Shelby has worked continuously and has had no reason to use the union's exclusive referral system. Her visits to the union office have not invoked the unions' status as the exclusive representative or the hiring hall.
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4	Exception 26	P.19:25-35	To the remedy in its entirety.
5	Exception 27	P.19:31-33	The Union cannot remove from its files any reference to this matter because the ALJ's decision and presumably the Board decision will have such a reference and the Union is entitled to leave that in her file. It will also be required to under the ALJ's proposed order to provide notice to the Las Vegas Police which it has a right to leave in her file to clarify that it did in fact take appropriate action if required by a subsequent Board Order.
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9	Exception 28	P.20:1-3	This is totally unnecessary because as the judge found, there has been no failure to refer Ms. Shelby. There is no reason to have this in the Board Order since at most paragraph A is a sufficient remedy. The only remedy which his appropriate if at all is to ask to tell the police that an escort is not necessary.
10	Exception 29	P.20:5-6	
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12	Exception 30	P.20:8-9	There is no need to have "in any like a related matter" because Ms. Shelby was only restricted in a very specific matter having to do with Police escort.
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14	Exception 31	P.20:19-21	As noted above, the Respondent is required to notify the Las Vegas Police and that notification needs to be kept in Ms. Shelby's file as well as any Board decision. The record of this incident needs to be maintained by the Respondent in case there is any future misconduct by Ms. Shelby.
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17	Exception 32	P.20:24-44	Electronic notification is unnecessary since this effected only one employee and there is no evidence any other members are aware of this issue.
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19	Exception 33	P.20:33-36	This matter does not involve the operation of the hiring hall and therefore respondent should not be required to mail any notice. It furthermore should not be required to mail the notice to members who appeared on the hiring hall list except on the day of October 4, 2011.
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22	Exception 34	P.20:38-42	There is no evidence that the police escort requirement affected Ms. Shelby's employment and therefore there is no reason to have any notice posted by any employer who may be signatory to the Union's collective bargaining agreement.
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25	Exception 35		To the Notice in its entirety.
26	Exception 36		To the part of the Notice that says "we will not threaten to exclude you" because Ms. Shelby was not excluded from the hiring hall.
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28			

1 Exception 37

The "We will not tell you that you are banned..." language because it refers to other concerted activities.

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3 Exception 38

The "We will not in any likely related manner..." because the respondent is only accused of interfering with her Section 7 rights in the very limited manner described above.

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5 Dated: June 28, 2012

Respectfully submitted,

6 WEINBERG, ROGER & ROSENFELD  
7 A Professional Corporation

8           /S/ David A. Rosenfeld            
9 DAVID A. ROSENFELD  
10 Attorneys for the Respondent /Union

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**PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On June 28, 2012, I served the following documents in the manner described below:

**EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

On the following part(ies) in this action:

- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.
- (BY E-Gov SYSTEM) I electronically served the above-described document on the following parties by electronically filing the foregoing with the NLRB on June 28, 2012.

Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street N.W.  
WASHINGTON, D.C. 20570

Stephanie Shelby  
609 Bursting Sun Avenue  
North Las Vegas, NV 89032-8239

[Shelby5454@gmail.com](mailto:Shelby5454@gmail.com)

VIA E-GOV, E-FILING

VIA EMAIL

Pablo Godoy  
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NLRB, Region 28  
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VIA EMAIL

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 28, 2012, at Alameda, California.

/s/Katrina Shaw  
Katrina Shaw