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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COUPLED PRODUCTS, LLC

and

Cases 25-CA-031883  
25-CA-062263

INTERNATIONAL UNION, UNITED AUTOMOBILE  
AEROSPACE AND AGRICULTURAL WORKERS OF  
AMERICA, UAW

ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS  
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

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Comes now Counsel for the Acting General Counsel, by the undersigned, and files the following Brief in Support of Exceptions to the decision of the Administrative Law Judge issued in this matter on June 20, 2012.

I. STATEMENT OF THE CASE

On June 17, 2011<sup>1</sup>, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (herein called “the Union”), pursuant to the provisions of the Act, filed a charge with the National Labor Relations Board (herein called “the Board”) against Coupled Products, LLC, (herein called “the Respondent”) in Case 25-CA-031883 and on August 4 the Union filed a charge with the Board against Respondent in Case 25-CA-062263, alleging that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. Thereafter, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (herein called “the Complaint”), was issued on December 28.

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<sup>1</sup> All dates hereinafter are 2011, unless otherwise indicated.

Specifically, the Complaint alleged that the Respondent violated Section 8(a)(1) and (5) of the Act when it failed to provide the Union with requested financial information and when it unilaterally changed the employees' terms and conditions of employment without first bargaining to a good-faith impasse. In addition, the Complaint alleges that as a result of these actions, the Union's June 17 strike was caused and prolonged by the Respondent's unfair labor practices.

An administrative hearing was held before Administrative Law Judge Mark Carissimi on April 2, 3, and 4, 2012, in Fort Wayne, Indiana. On June 20, 2012, Judge Carissimi issued his decision in the instant cases. Judge Carissimi found that the Respondent did not violate Section 8(a)(1) and (5) of the Act by refusing to provide the Union with Respondent's financial records (ALDJ, p. 15, ll. 26-28). In addition, Judge Carissimi found that since the Respondent had no obligation to provide the requested information, Respondent did not violate the Act when it implemented its final offer because the parties reached a valid impasse in negotiations (ALJD, p. 19, ll. 16-18). Finally, Judge Carissimi found that in the absence of any violation of the Act, the Union's strike, commenced on June 17, 2011, was not an unfair labor practice strike but rather an economic one (ALJD p. 19, ll. 22-24).

## II. STATEMENT OF FACTS

The Respondent is a corporation with an office and place of business in Columbia City, Indiana, and is engaged in the manufacture of automotive and agricultural tubing supplies (TR 29). Tina Johnson (herein called "Johnson") is the director of U.S.

Operations for the Respondent and has held this position for three to four years. She is the highest management official in the Columbia City facility (TR 28).

In October 2010, Respondent advised the Union that it intended to move the work performed by the bargaining unit employees at the Columbia City facility to the Respondent's facility in Mexico. Among the reasons given by the Respondent for this move was lower labor costs at the Mexican facility (GC's Exhibit 3, TR 33). In addition, the Respondent posted a notice in the Columbia City facility, notifying the employees that by moving the work from that facility to Mexico it would save approximately \$2 million per year and that this move was being made "in an effort to be profitable." (GC's Exhibit 4, TR 33).

After preliminary negotiations regarding a closure agreement, the parties decided that an attempt would be made to retain the jobs in Columbia City (GC's Exhibit 5, TR 35-36). On November 16, 2010, the Respondent provided the Union with an unaudited financial report, which Johnson identified as a profit and loss statement, prepared by the Respondent for the months of January through October, 2010 (GC's Exhibit 5).

Throughout January, the parties attempted to reach agreement on concessions which would allow the Respondent to retain the current bargaining unit jobs in the Columbia City facility. Among these concessions was a \$.75 an hour cut in pay for all bargaining unit employees, which would increase by \$.06 an hour per week until the Union accepted the proposal, and the elimination or drastic reduction in benefits (GC's Exhibit 7).

The Union submitted a counterproposal dated January 24, which was rejected by the Respondent (TR 39, GC's Exhibit 8). The Respondent then offered what it

characterized as its final best proposals, dated January 25 and 27 (GC's Exhibits 9 and 10). These were essentially identical to its earlier proposal, however, the Respondent increased the hourly pay cut from \$.75 to \$.87 an hour. The Union was warned that this amount would increase by \$.06 an hour, per week, until the proposal was accepted. In addition, the Respondent notified the Union that unless an agreement was reached, it would proceed with its plan to move the work being performed at the Columbia City facility to Mexico.

The parties were unable to reach an agreement. However, the Respondent announced that it no longer wanted to negotiate a closure agreement, but instead would wait until May to negotiate a new collective-bargaining agreement with the Union (GC's Exhibit 12).

On or about May 3, the parties exchanged proposals for a new collective-bargaining agreement (GC's Exhibits 13 and 14). The Respondent's proposal sought massive monetary concessions from the Union. In addition to the items it had sought during the earlier negotiations, the Respondent increased its wage concessions to \$4.50 an hour. However, instead of seeking the concessions from all bargaining unit employees, as it had in its previous proposals, it was now only seeking wage concessions from what it is characterized as non-skilled employees. This made up eight of the thirteen classifications in the bargaining unit (GC's Exhibit 21).

On May 17, the parties began negotiations for a new collective-bargaining agreement. During the May 17 and 18 negotiations the parties did not discuss monetary issues (TR 61-62 and TR 94-95).

On May 19, the Union sent a letter to Johnson requesting to review the Respondent's "financial books" (GC's Exhibit 15). In response, the Respondent provided the Union with a one-page document with financial information for the Columbia City facility for January through April (GC's Exhibit 16). The document was a continuation of the January 2010 to October 2010, document the Respondent had provided to the Union as part of General Counsel's Exhibit 5. It was prepared internally by the Respondent and also had not been audited by any outside entity (TR 62-63).

On May 20, the parties began to negotiate over the Respondent's monetary proposals. Johnson told the Union that the Respondent was losing money and customers and that it needed wage and benefit concessions in order to be competitive (GC's Exhibit 31, R's Exhibit 8, TR 66, TR 107). Near the end of that meeting Johnson made Respondent's objective clear. McMillan asked Johnson whether she was trying to break the Union. Johnson responded that she believed that there were people who would accept the Respondent's proposals (GC's Exhibit 31).

On May 24, the parties again addressed the monetary issues proposed by the Respondent. The parties discussed the Respondent's proposed \$4.50 an hour wage cuts for non-skilled classifications, the Respondent's proposal to cease making contributions toward the cost of employees' health insurance premiums, the elimination of sick and accident pay, the elimination of bereavement leave, and the elimination of the perfect attendance bonus. Regarding the \$4.50 an hour wage reduction, Johnson told the Union that it was needed for the Respondent to be competitive. Throughout the meeting, Johnson repeated that the monetary issues had to stand and that she would not budge (GC's Exhibit 31).

Also during that meeting, Respondent gave the Union documents which purported to show that it had conducted a wage survey and that the non-skilled employees' wages were higher than others in similar classifications at other facilities in the general area (TR 403-412 and R's Exhibits 10, 11, 12, and 13). However, upon cross-examination Human Resources Director Rose Rubrake (hereafter called "Rubrake") admitted that the only information she had sought in compiling this "survey" was job classification and wage rate (TR 438). There was no evidence that the industries in which these jobs existed or the duties of those holding these classifications had any relationship to the work done by the bargaining unit employees (TR 447-450). Near the end of the meeting, Johnson told the Union that she was fighting to keep jobs in the United States and that she intended to stand firm on the Respondent's monetary proposals (GC's Exhibit 31, R's Exhibit 8, TR 67, TR 119). In addition, Johnson repeatedly stated that the Respondent was not profitable and stated that it would stand firm on economic issues. During this meeting, McMillan requested to audit the Respondent's books (R's Exhibit 8).

The parties next met on May 27, and, as of that date, the parties reached agreement on all non-monetary issues (GC's Exhibit 31). The parties continued to negotiate on monetary issues. On this same date, Johnson sent a letter to the Union to which was attached the Respondent's Last and Best Proposal. The monetary proposal in this document was nearly identical to the Respondent's initial monetary proposal. However, in this offer the Respondent for the first time changed its positions on wages, lowering the pay cut for non-skilled employees to \$4.25 an hour from the \$4.50 it had initially proposed (GC's Exhibit 20). On June 8, the Respondent sent a follow-up last and best proposal. In this proposal, the Respondent did not change any of its previous

positions, and it only clarified them at the Union's request (TR 76). Further, the Respondent claimed that it was losing money at the Columbia City facility (GC's Exhibit 21).

The parties met again on June 6, and the Union advised the Respondent that it would take the proposal to the membership, but would not be able to support it (TR 75). After discussing pending grievances and failing to reach any settlement, the meeting ended (GC's Exhibit 31).

On June 9, the Union met with its members to present the Respondent's proposal. The members voted on the Respondent's proposal and turned it down on a vote of 46-4 (GC's Exhibit 36). The parties met for the final time on June 15. The Union presented the document it had prepared as a result of consultation with its members (GC's Exhibit 36). The Respondent reviewed it and reiterated that it had given the Union its best and final offer. The Union made a case regarding what the employees had to offer and argued that they could not live off of \$8.79 an hour. Johnson responded that they all could live off of that amount. Johnson stated that there was no chance for an extension of the current contract (GC's Exhibit 31). The meeting and negotiations for a new collective-bargaining agreement ended shortly thereafter. On this same date, the Respondent posted a notice in its facility notifying employees that the Union was going on strike at midnight on June 17 (GC's Exhibit 22)

On June 16, Respondent posted a notice in its facility stating that its last best offer would go into effect on Monday, June 20 (GC's Exhibit 30). In addition, on June 20, Johnson sent an e-mail to Rubrake advising her to implement the Respondent's last, best final offer (GC's Exhibit 23). Rubrake, in turn, sent a memo to the Respondent's

employees advising them that the cost of medical insurance would increase effective, July 1 (GC's Exhibit 25). In addition, the Respondent adjusted the wages of the non-skilled employees to reflect a \$4.25 an hour decrease in wages from their prior wages (GC's Exhibits 28 and 29).

On June 17, the Union sent a letter to the Respondent once again requesting that it open its books to the Union. In this letter the Union asked that the Respondent prove the claim that it was losing money. The Union hoped that with concrete proof of the Respondent's financial distress, it might be able to convince its members that the monetary concessions were necessary. (GC's Exhibit 40).

The Union commenced a strike on June 17. This followed a May 2 strike vote of Union members. Ninety-six percent of the members voted to authorize the Union to strike if they were unable to reach an agreement with the Respondent (GC's Exhibit 33). However, the Union could not engage in a sanctioned strike without the authorization of the International Union (TR 202). On June 15, the International Executive Board of the UAW authorized its members to strike Coupled Products, LLC (GC's Exhibit 42). Former Assistant Regional Director Mike Ailes (hereinafter called "Ailes) testified that in his conversations with then Regional Director, Maurice Davison (hereinafter called "Davison"), he recommended that the strike be authorized because the Respondent had failed to provide the Union with the information that they had requested from the Respondent. In addition, he believed that the strike was an unfair labor practice strike because the Union could not make rational bargaining decisions without the information they had requested from the Respondent (TR 287-288).

Since the expiration of the collective-bargaining agreement on June 17, the employees have been picketing the Respondent's facility in Columbia City, displaying signs that read: "UAW ON STRIKE" and "UAW ON STRIKE UNFAIR LABOR PRACTICE." (GC's Exhibit 17(a), (b), and (c)). They have used these signs throughout the strike (TR 215).

On June 20, the Respondent implemented its final offer to the Union and notified the Union that it would begin hiring permanent replacement workers. Johnson testified that there are currently approximately 32-34 replacement workers in the facility. (GC's Exhibit 24, TR 30). Since that time employees at the Columbia City facility have worked under the terms and conditions of employment contained in Respondent's final offer to the Union.

### III. ARGUMENT

#### A. The Administrative Law Judge Erred By His Failure To Find That Respondent Claimed An Inability To Pay and By His Failure To Find That Respondent Violated Section 8(a)(1) And (5) of The Act By Failing To Provide Requested Financial Information To The Union (Acting General Counsel Exceptions 1 through 15).

In his decision Judge Carissimi found that Respondent was not required to provide the Union with Respondent's financial records after the Union requested such records because Respondent did not claim it was unable to pay existing wages and benefits. (ALJD p. 15, ll. 11-12 and ALJD p. 15, ll. 13-14). In doing so Judge Carissimi relied upon his interpretation of existing case law, including Stroehmann Bakeries, Inc., 318 NLRB 1069 (1995) and Caldwell Manufacturing Co., 346 NLRB 1159 (2006). As hereinafter discussed, Judge Carissimi has misapplied the existing case law, including the

above cases, and reached erroneous factual and legal conclusions regarding Respondent's refusal to provide the Union with requested financial information.

Section 8(a)(5) of the Act requires that an employer bargain in good faith with its employees' collective-bargaining representative. One of the obligations of good-faith collective bargaining is to furnish, upon request, information relevant to the collective-bargaining process. NLRB v. Acme Industries, 385 U.S. 432, 435-437 (1967).

Information regarding employer finances is not presumptively relevant, but may become relevant based upon an employer's assertions made during bargaining. In NLRB v. Truitt Manufacturing, Co., 351 U.S. 149, 152-153 (1956), the Supreme Court held that an employer violated Section 8(a)(5) of the Act by refusing to provide the union with general financial information needed to substantiate the employer's claim that it could not afford to grant the wage increase sought by the union because such an increase would put the employer out of business. *Id.* The Court explained that:

Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to pay an increase in wages. If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of accuracy.

There are no "magic words" required to establish an obligation to provide general financial information, but the obligation arises whenever the employer's statements and actions convey an inability to pay. Atlanta Hilton and Towers, 271 NLRB 1601, 1602 (1984).

In determining whether an employer has made an inability-to-pay claim, the Board evaluates the substance of the employer's assertions rather than merely looking to the words used at the bargaining table. See ConAgra, Inc., 321 NLRB 944 (1996), *enf. denied* 117 F.3d 1435 (D.C. Cir. 1999). See also Lakeland Bus Lines, 335 NLRB 322,

324 (2001), *enf. denied* 347 F.3d 955 (D.C. Cir. 2003). For example, in Stroehmann Bakeries, Inc., 318 NLRB 1069, 1079 (1995), *enf. denied* 95 F.3d 218 (2nd Cir. 1996), the Board found that the employer made an inability-to-pay claim when it stated that it had suffered huge losses in the preceding year, that it projected heavy losses in the coming year, and that the facility could not continue to operate with such heavy losses. The employer then proposed drastic reductions in wages and benefits to decrease the losses.

In Stroehmann, the employer claimed that it was losing money at the facility and that it projected heavy losses again in the coming year. The employer then went on to claim that the facility could not continue to operate with such losses. Specifically, the employer stated that the concessions the employer was seeking were necessary if the employer was “. . . to remain in the baking business in the United States and remain competitive.” *Id.* at 1070. In Stroehmann, the Board upheld the administrative law judge’s decision that tying the survival of the facility to the union’s acceptance of the employer’s concessionary proposals was part and parcel of an inability to pay claim. *Id.* at 1079. The judge in Stroehmann found that the employer was required to provide financial information even in the absence of an explicit claim of an inability to pay current wages and benefits.

In the instant case, the Respondent used almost the identical language when it told the Union that it was fighting to keep jobs in the U.S.<sup>2</sup> These assertions that Johnson was

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<sup>2</sup> Johnson testified at the hearing that during negotiations she told the Union that she was fighting to keep their jobs in the U.S. (TR 67). This was corroborated by Union Recording Secretary Beverly Kohn (herein called “Kohn”), who testified during cross-examination by Respondent’s counsel that Johnson repeated this statement “more than twice” during the course of negotiations (TR 160). Respondent does not refute either of these statements, therefore, Counsel for Acting General Counsel respectfully requests that

fighting to keep jobs in the U.S. occurred in the context of a threat by Respondent just a few months prior to close the Columbia City facility and move the work to Mexico. In that threat to close the facility, labor costs were explicitly cited as one of the reasons for the closure of the Columbia City facility. Specifically, it told employees in October 2010 that by moving their work to Mexico, it could save \$2 million dollars and that “Coupled Products has no choice but to move the business to Mexico to realize the enormous labor savings available in an effort to be profitable.” (GC’s Exhibit 4). In this context, Respondent’s use of this language in contract negotiations clearly linked the survival of the Columbia City facility, which was the only one the Respondent operated in the United States, to the wage and benefit concessions Respondent was demanding from the Union. There is simply no other way to reasonably interpret Respondent’s statements. Thus, the facts of the instant case fall squarely under the administrative law judge’s decision in Stroehmann. A decision that was then upheld by the Board.

In his decision in the instant case, Judge Carissimi distinguished the instant case from Stroehmann on several grounds. First the Judge found that Respondent never claimed it was losing money as a whole or that its survivability was at issue. (ALJD p. 16, ll. 8-9) The Judge errs in finding that this distinguishes the instant case from Stroehmann because the employer in Stroehmann never asserted either of those facts. The employer in Stroehmann never claimed that it was losing money as a whole. Rather, the employer claimed that its parent company had deep pockets and that it was only the particular facility that was losing money. Id. at 1079. Nor did the employer assert that the survivability of the company as a whole was at issue. It only asserted that the

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the Board find that the foregoing statements were made by Johnson (Acting General Counsel’s Exception 1).

survivability of that facility was at issue. Id. This is true in the instant case as well.

Respondent clearly indicated that the survival of the Columbia City facility was at issue when it threatened to move the work to Mexico and tied its concessionary proposals to a desire to save the work for the United States.

The Judge also distinguishes the instant case from Stroehmann by asserting that in the instant case, unlike in Stroehmann, Respondent did not base its proposals on financial hardship or an inability to pay current wages and benefits. (ALJD. p. 14, ll. 24-25 and ALJD, p. 16, ll. 17-19). The statement that Respondent did not base its proposals on financial hardship is completely unsupported by the record. Respondent asserted again and again in negotiations that it was suffering severe financial losses at Columbia City. Respondent threatened to move the Columbia City work to Mexico in order to save on labor costs. Respondent's concessionary proposals were clearly based on financial hardship. Finally, as to the finding that the Respondent's proposals were not based on an inability to pay current wages and benefits, the judge in Stroehmann specifically found that the employer in that case never claimed an inability to pay existing wages and benefits. The instant case falls squarely under the ruling in Stroehmann, and the two cases cannot be distinguished in any meaningful way.

In Lakeland Bus Lines, 335 NLRB 322 (2001), the Board found that the employer's statements that the future of the business and the employees' jobs depended upon the acceptance of its proposals, when combined with its statement that it needed to "get back into the black in the short term," amounted to an inability-to-pay claim. In ConAgra, Inc., 321 NLRB 944 (1996), an employer during negotiations placed the survival of the company at issue several times unless immediate measures were taken.

Once again, the Board held that this amounted to a claim of an inability pay existing wages and benefits. Finally, in Stella D'oro Biscuit Co., 355 NLRB No. 158 (August 27, 2010), the Board held that an employer made a claim that it was unable to pay the costs of the expiring collective-bargaining agreement and therefore obligated itself to provide the union with the requested documentation of that claim. The Board found that the employer in Stella D'oro repeatedly claimed that it was suffering severe financial losses and tied eliminating those losses to the survival of the business. The Board held that this amounted to a claim of inability to pay.

Judge Carissimi, in his decision in the instant case, distinguishes all of the above cases on the basis that Respondent never made any statements linking its economic proposals to its survivability as a company (ALJD p. 16, ll. 34-36 and ALJD p. 17, ll. 20-22). That is a distinction without a difference. Respondent might never have asserted that the entire company would have to be shuttered, but it repeatedly stated that Columbia City was suffering severe losses and threatened to close the facility and move the work to Mexico. Respondent's chief negotiator, Tina Johnson, in arguing for Respondent's Draconian proposals repeatedly stated that she was trying to save these jobs for this country. What difference could it possibly make to the Union or the employees in the bargaining unit if Respondent was referring to the Company as a whole or just to the Columbia City facility? The employees' jobs were in Columbia City. If that plant closed, they would be out of work. The Union represented the employees at Columbia City. Respondent was clearly putting the survival of the Columbia City facility at issue, and under the reasoning of the above cases, this amounted to a claim by Respondent of an inability to pay existing wages and benefits at the Columbia City facility.

In Caldwell Manufacturing Company, 346 NLRB 1159 (2006), the Board held that when an employer makes a specific factual assertion during bargaining, information needed to verify the assertion becomes relevant and necessary to bargaining. Unlike an assertion of “inability to pay,” when an employer makes a specific factual assertion regarding finances, the union is entitled to only that information that would allow the union to evaluate and verify the assertion; it is not entitled to general access to the employer’s financial records.

In the instant case Respondent did make assertions, namely that it was suffering severe financial losses at Columbia City, which the Union was entitled to evaluate and verify. Throughout the May and June negotiations, the Respondent repeatedly claimed that it was losing money. It stated that it could not stay competitive with the wage and benefit structure at Columbia City and that without the massive wage and benefit cuts it was seeking it would not be able to keep the facility open and keep the employees jobs in the U.S. In fact, during late 2010, Respondent claimed that the situation was so dire that it had no choice but to close the Columbia City facility and move the work to its plant in Mexico. There was no mention of competitiveness, only profitability. Indeed, the language used in this document certainly suggests that Coupled Products could not be profitable unless it closed the Columbia City facility, something that the Respondent has since denied. Even after the Respondent reversed its position and allowed the Union to offer concessions in January and February, in an attempt to keep the work in Columbia City, Respondent claimed that the concessions it was demanding would not be able to make up the cost difference with Mexico (GC’s Exhibit 10). During the May and June negotiations the Respondent demanded greater wage and benefit concession than it had

sought in January and February, however, it now couched these demands in terms of the need to remain competitive and claims that it was only losing money at the Columbia City facility and not at Coupled Products, LLC (TR 66-68) (ALJD p. 14, ll. 6-9).

The information Respondent provided to the Union in October, 2010 and May, 2011 was insufficient for the Union to determine if the Respondent's claims regarding the financial position of the Columbia City facility were true (GC's Exhibits 5 and 16). While the Respondent argues that it has satisfied its obligation to the Union by providing it with the profit and loss statements for Columbia City for the period of January, 2010 through April 2011, these documents are incomprehensible. Not even Johnson, who is the Director of the Respondent's U.S. Operations and the highest management official at the Columbia City facility could explain them, even though she claimed that they were used internally by Respondent to determine the Columbia City facility's financial position from month to month (TR 37). However, when asked to explain various categories in the document, she was unable to do so. While the Respondent claims that it is losing money as a result of the wages and benefits of the bargaining unit employees, the two largest expenses on the document, which the Respondent provided to the Union in May, are \$759,856.00 for Allocable Selling, etc, and \$800,000.00 for Management Fees. When Johnson was asked to explain the components of these two categories, she was unable to do so. Further, the Respondent admits that both documents are unaudited by any outside entity (TR 89-91). Therefore, without reviewing the underlying figures, which were used to compile this data, the Union is unable to test the veracity of the Respondent's claims.

Judge Carissimi distinguishes the instant case from Caldwell by claiming that the Union's requests in the instant case were overly broad because they requested general financial information rather than specifically limiting the requests to information about Columbia City.<sup>3</sup> (ALJD p. 18, ll. 1-3). This is inaccurate. The Union's June 17 information request was clearly in response to the Respondent's June 8 last and best proposal. In that June 8 proposal the Respondent unequivocally stated that it was losing money at Columbia City. It is obvious that the Union's request was linked to the Respondent's June 8 request and, therefore, the Respondent had an obligation to provide further information regarding the scant financial information it had provided to the Union regarding the losses it claimed at the Columbia City facility. (R's Exhibit 6, GC's Exhibit 21). This followed both the May 20 and May 24 bargaining sessions, at which Respondent stated that the Columbia City facility was suffering losses. The Union, by its June 17 letter, requested financial information "because [y]ou tell us the company is continuously losing money." The Union is clearly referring to claims of losses at Columbia City and thus, the requests were not overbroad. The Union was therefore entitled to the information necessary to support Respondent's specific financial assertions (ALJD, p. 18, ll., 27-29).

At the very least, the Respondent had an obligation to inquire of the Union regarding the exact nature of its request and, upon further clarification by the Union, provide more detailed information regarding the losses it claimed it was experiencing at the Columbia City facility. In any case, the Respondent was still obligated to provide the Union with information to substantiate the specific economic claims it made to justify its

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<sup>3</sup> Judge Carissimi distinguishes the Board's decisions in A-1 Door & Building Solutions, 356 NLRB No. 76 (2011) and Taylor Hospital, 317 NLRB 991 (1995) for the same reason, namely that the Union's requests were allegedly overbroad.

concessionary proposals. Respondent's refusal to provide any further information was not excused because the Union's request might have been interpreted by Respondent as overbroad. Keauhou Beach Hotel, 298 NLRB 702 (1990) Rather, the employer had the duty to comply with the request to the extent that it encompassed relevant information necessary to verify its assertions. Caldwell Manufacturing Co., 346 NLRB at 1160; A-1 Door & Building Solutions, 356 NLRB No. 76 at 4 (2011). Thus, given the context in which the requests were made, namely repeated statements that the Columbia City facilities were losing money, Respondent should have provided the Union with information relevant to verify those claimed losses.

In Kennametal, Inc., 358 NLRB No. 68, at 3, fn. 7 (June 26, 2012), the Board held that although the generalized information sought by the union was not a mandatory subject of bargaining, the employer had a duty to provide relevant information subsumed in the more general request. In this case, the timing of the union's request made it clear what information it was seeking and that "an employer is not free to simply ignore an ambiguous or overbroad information request." Id. citing Keauhou Beach Hotel, 298 NLRB 702, 702 (1990). This is very similar to the instant case, where the context of the Union's request made it clear what was being requested (ALJD, p. 18, ll. 39-46).

Based on the foregoing analysis, the evidence clearly demonstrates that the Administrative Law Judge erred by his failure to find that Respondent claimed an inability to pay and by his failure to find that Respondent violated Section 8(a)(1) and (5) of the Act, by failing to provide requested financial information to the Union (Acting General Counsel Exceptions 1 through 15). Thus, Acting General Counsel Exceptions 1 through 15 should be granted and the Board should find that Respondent violated

Section 8(1) and (5) by refusing to provide the Union with the requested financial information.

B. The Administrative Law Judge Erred By His Failure to Find That The Parties Were Not At A Valid Impasse When Respondent Implemented Its Final Offer and By His Failure to Find That Respondent Violated Section 8(a)(5) By Implementing Its Final Offer (Acting General Counsel Exceptions 16 through 18)

A claim of impasse is an affirmative defense. As such, the Respondent is required to provide evidence of the claim. Respondent produced no such evidence at the hearing. Indeed, it the position of Counsel for Acting General Counsel that no impasse existed and, in fact, no impasse could have existed since the Respondent failed to provide the Union with information that was relevant and necessary as the exclusive collective-bargaining representative of the Columbia City employees.

The Respondent's failure to provide the Union with the financial information constitutes an unfair labor practice. The Board in Caldwell Manufacturing Company, 346 NLRB 1159 (2006), addressed this issue stating: "Under consistent Board precedent, a finding of a valid impasse is precluded where the employer has failed to supply requested information relevant to the core issue separating the parties." Id. at 1170.

Without the financial information it requested, the Union lacked the ability to determine whether or not the enormous concessions sought by the Respondent were reasonable and what, if any, alterations it should make to its proposals and bargaining strategy. Without the information to make this determination, it was unable to intelligently counsel its members as to whether or not they should accept the Respondent's best, final offer, or go on strike in an attempt to pressure the Respondent to offer better terms.

In Decker Coal, 301 NLRB 729 (1991), the Board held that: “A legally recognized impasse cannot exist where the employer has failed to satisfy its statutory obligation to provide information needed by the bargaining agent to engage in meaningful negotiations.” Id. at 740 Respondent’s unilateral changes in the Union’s wages and working conditions cannot be justified, because the failure to provide the information needed by the Union, denies it the ability to make considered and intelligent bargaining decisions.

As stated above, after the Union went on strike, at the expiration of the collective bargaining agreement, the Respondent implemented its final offer to the Union. This amounted to unilateral changes of employee wages, benefits and working conditions, without bargaining to a valid impasse. The record reflects that Respondent reduced the wages of non-skilled classifications by \$4.25 an hour, eliminated the employer contribution for employee health insurance, eliminated paid bereavement days, eliminated the sick and accident benefit, eliminated the Good Friday holiday and reduced the Christmas Eve and New Years Eve holiday to one-half day each. In addition, the Respondent reduced employees’ vacation time by one-half, made changes in the manner in which vacation is paid and earned, and eliminated pay for unused vacation time. The Respondent’s unilateral reduction in employees’ wage rates and benefits, since about June 17, constitutes a violation of Section 8(a)(1) and (5) of the Act.

Based on the foregoing analysis, the evidence clearly demonstrates that the Administrative Law Judge erred by his failure to find that the parties were not at a valid impasse when Respondent implemented its final offer and by his failure to find that Respondent violated Section 8(a)(5) by implementing its final offer (ALJD, p. 19, ll. 8-

10, ALJD, p. 19, ll. 16-18, and ALJD, p. 19, ll. 18-20). Thus, Acting General Counsel Exceptions 16 through 18 should be granted and the Board should find that Respondent violated Section 8(1) and (5) by implemented its final offer at a time that the parties were not at a valid impasse.

C. The Administrative Law Judge Erred By His Failure to Find That The Strike Initiated By The Union Was An Unfair Labor Practice Strike (Acting General Counsel Exception 19)

On June 17, the Union went on a strike. This followed Respondent's unlawful refusal to provide the Union with necessary and relevant information. After the strike commenced Respondent unilaterally implemented its last, best, and final offer and thus, unlawfully changed employee terms and conditions of employment. As noted above, these changes included a wage cut and changes to employee benefits and working conditions. The Board in RGC (USA) Minerals, Inc., 332 NLRB 1633, 1643 (1978), stated: "It is settled law that a strike is an unfair labor practice strike if one of the causes is the employer's unfair labor practices, even if economic factors are present." Throughout the bargaining process the Respondent refused to justify its demands for wage cuts with information regarding its financial situation. This information is necessary and relevant to the Union's duty as the employees' exclusive collective-bargaining representative.

As set forth above, on May 2, the Union took a strike vote of its members. Ninety-six percent of the members voted to authorize the Union to strike, if they were unable to reach an agreement with the Respondent (GC's Exhibit 33). On June 15, the International Executive Board of the UAW authorized its members to strike Coupled Products, LLC (GC's Exhibit 42). Former Assistant Regional Director Mike Ailes

(herein called “Ailes”) testified that in his conversations with then Regional Director, Maurice Davison (herein called “Davison”), he recommended that the strike be authorized because the Respondent had failed to provide the Union with the information that it had requested from the Respondent. In addition, he believed that the strike was an unfair labor strike because the union could not make rational bargaining decisions without the information they had requested from the Respondent (TR 287-288). He was aware of the multiple requests for financial information the Union had made to the Respondent during bargaining and expressed his concern about this to Davison (TR 285). In addition, Union President, Kathy Smith (herein called “Smith”) testified that one of the “sticking points” during negotiations was the Respondent’s failure to provide the Union with the information that it had repeatedly requested (TR 259).

In Decker, the Board held that where the Respondent declares impasse and has failed to provide the union with information that it has requested, “. . . it can support the conclusion that the strike was an unfair labor practice one, if the absence of that information ‘had anything to do with causing the strike’.” Id. at 746.

In the instant case, it is undisputed that one of the reasons that the strike was authorized by the International Union was the Respondent’s failure to provide the Union with the information it needed to make an informed assessment of the Respondent’s position that it needed deep cuts in wages and benefits. The Respondent premised these cuts on the contention that it was losing money at the Columbia City facility and that without these cuts, the facility could not survive.

Finally, the Respondent's unilateral changes in wages and benefits have clearly prolonged the Union's strike. Specifically, Smith testified that she is unwilling to return to work under the current wages, benefits, and working conditions (TR 218).

Based on the foregoing analysis, the evidence clearly demonstrates that the Administrative Law Judge erred by his failure to find that the strike initiated by the Union was an unfair labor practice strike (ALJD, p. 19, ll. 22-24). Acting General Counsel Exception 19 should, therefore, be granted and the Board should find that the strike initiated by the Union was an unfair labor practice strike.

#### IV. CONCLUSION

For the reason set forth above, the Board should find merit to the Acting General Counsel's exceptions and should find and conclude that Respondent has violated the Act as alleged in the Complaint. In particular, the Board is requested to find that Respondent violated Section 8(a)(1) and (5) when it failed to provide the Union with requested financial information and when it unilaterally changed the employees' terms and conditions of employment without first bargaining to a good-faith impasse. The Board is also requested to find that the strike authorized by the Union is an unfair labor practice strike. Counsel for Acting General Counsel requests that the Board grant an appropriate remedy for these violations of the Act. A proposed Notice to Employees is attached

hereto. Specifically, it is requested that the Administrative Law Judge's recommended Order that the complaint be dismissed and his failure to provide for an appropriate remedy, be overruled (ALJD, p. 19. ll. 30).

Respectfully Submitted,

/s/

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**(To be printed and posted on official Board notice form)**

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

Employees who strike because we violated the National Labor Relations Act are unfair labor practice strikers. Generally, unfair labor practice strikers are entitled to return to their jobs when they make an unconditional request to do so.

**WE WILL NOT** refuse to return unfair labor practice strikers to their jobs when they request to return to work.

The United Automobile, Aerospace, and Agricultural Workers of America Local 2049 is the employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit:

All production and hourly employees employed by the company at our 2651 South 600 East, Columbia City, IN 46725 facility, as certified by the National Labor Relations Board in Case No. 25-RC-6718 on November 14, 1977.

**WE WILL NOT** refuse to provide the Union with information that is relevant and necessary to its role as your bargaining representative.

**WE WILL NOT** make unilateral changes in wages, hours and working conditions without reaching an overall good-faith impasse with the Union.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE WILL**, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the above described unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

**WE WILL**, upon five days of their unconditional request to return to work, offer to those employees who joined the unfair labor practice strike that commenced on June 17, 2011, immediate and full reinstatement to their former jobs, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any replacements, and make whole those employees for any loss of earnings or benefits suffered as a result of any failure on our part to timely reinstate them.

**WE WILL** provide the Union with the financial information it requested on May 24, May 27, and June 17, 2011.

**WE WILL**, if requested by the Union, rescind any or all unilateral changes to your terms and conditions of employment that we implemented on June 20, 2011, including the reduction in wages, elimination of health insurance, elimination of some paid holidays, and reduction in paid vacation, and restore all terms and conditions of employment as they existed prior to the June 20, 2011 implementation.

**WE WILL** make whole employees who returned to work during the strike for the wages and other benefits lost because of the unilateral changes to terms and conditions of employment that we made without bargaining to a lawful impasse with the Union, including the reduction in wages, elimination of health insurance, elimination of some paid holidays, and reduction in paid vacation.

**Coupled Products, LLC**

(Employer)

**Dated:** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Representative) (Title)

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).*

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**Telephone:** (317) 226-7381  
**Hours of Operation:** 8:30 a.m. to 5 p.m.

CERTIFICATE OF SERVICE

I hereby certify that a copy of Acting General Counsel's Brief in Support of Exceptions to the Administrative Law Judge's Decision and Acting General Counsel's Exceptions have been filed electronically with the Executive Secretary of the National Labor Relations Board at [www.NLRB.gov](http://www.NLRB.gov) and served by Electronic Transmission on July 18, 2012, upon the following persons, addressed to them at the following addresses:

Les Heltzer  
Executive Secretary of the Board  
National Labor Relations Board  
1099 14<sup>th</sup> Street, NW  
Washington, DC 20570-0001

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/S/

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