

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

<b>In the Matter of</b>	:	
	:	
<b>MIKE-SELL'S POTATO CHIP CO.,</b>	:	
	:	
<b>Respondent,</b>	:	<b>CASE NO. 9-CA-072637</b>
	:	
<b>and</b>	:	
	:	
<b>BAKERY, CONFECTIONARY,</b>	:	
<b>TOBACCO WORKERS AND GRAIN</b>	:	
<b>MILLERS INTERNATIONAL UNION,</b>	:	
<b>LOCAL 57, AFL-CIO-CLC,</b>	:	
	:	
<b>Charging Party.</b>	:	
	:	
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**EXCEPTIONS OF RESPONDENT MIKE-SELL'S POTATO CHIP COMPANY TO THE  
NATIONAL LABOR RELATIONS BOARD OF THE DECISION OF  
ADMINISTRATIVE LAW JUDGE PAUL BOGAS**

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**EXCEPTIONS OF RESPONDENT MIKE-SELL’S POTATO CHIP COMPANY TO THE  
NATIONAL LABOR RELATIONS BOARD OF THE DECISION OF  
ADMINISTRATIVE LAW JUDGE PAUL BOGAS**

Respondent Mike-sell’s Potato Chip Company (“Mike-sell’s” or “Company”), pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, hereby files its exceptions to the Decision and Order of Administrative Law Judge Paul Bogas (“ALJ”), which issued in the above-captioned case on July 3, 2012 (JD-36-12) (“Decision”). The specific grounds for these exception are detailed in the contemporaneously-filed Brief in Support of Exceptions to the Decision of Administrative Law Judge Paul Bogas. Mike-sell’s excepts to Judge Bogas’s Decision as follows:

1. Decision, p. 3, line 30.

The ALJ's finding that, "[i]n 2011, [Mike-sell's] decided to make reductions to employees' benefits," to the extent it is intended to convey that Mike-sell's never intended to bargain with the Union over the proposed changes.

2. Decision, p. 5, line 21 and footnote 3.

The ALJ's conclusion that it was "unnecessary" to resolve the "credibility question" related to the December 12th information session.

3. Decision, p. 6, line 41 to Decision, p. 7, lines 1-2.

The ALJ's finding that, "[a]ccording to Campbell and Newsome, Wille stated that [the Company] was going to implement the changes for other employees on January 1, but did not state that [the Company] was going to implement the changes for the B&C Unit."

4. Decision, p. 7, line 6 to Decision, p. 10, line 3.

The witness credibility findings, the basis for these findings, and the credibility conclusions of the ALJ.

5. Decision, p. 7, lines 6-8.

The ALJ's decision to "credit the testimonies of Campbell and Newsome over the testimony of Wille regarding all disputed aspects of the December 14 meeting," as well as the bases for this decision.

6. Decision, p. 7, lines 6-8.

The ALJ's conclusion that Wille's account of the December 14, 2011, negotiations session was "implausible in the extreme," as well as the bases for this conclusion.

7. Decision, p. 7, lines 12-14.

The ALJ's finding that Wille "immediately rejected the alternatives that Newsome proposed even though Campbell and Newsome discussed how painful the proposed reductions would be for unit employees."

8. Decision, p. 7, lines 17-18.

The ALJ's conclusion that "it is not credible that the Union would surrender on [the insurance] issue only 10 to 20 minutes into the first negotiating session on the subject," as well as the bases for this conclusion.

9. Decision, p. 7, lines 18-19.

The ALJ's conclusion that "[a]ll of the evidence indicates that the Union had been gearing up for a battle regarding the reductions."

10. Decision, p. 7, lines 26-28.

The ALJ's conclusion that "[b]y refusing to agree, the Union could potentially have either stopped the reductions from being implemented or extracted concessions from [Mike-sell's]."

11. Decision, p. 7, lines 33-35.

The ALJ's finding that Newsome and Campbell informed Wille that the Company "would have to take the [proposed insurance changes] to arbitration if it wished to pursue the reduction in unit member's benefits," as well as the bases for this finding.

12. Decision, p. 7, lines 37-38.

The ALJ's conclusion that "Wille's claim that she and Newsome agreed that [Mike-sell's] had 'the right to make the changes' for the bargaining unit employees is . . . dubious . . ."

13. Decision, p. 7, lines 45-47 to Decision, p. 8, lines 1-2.

The ALJ's conclusions that "[i]t is implausible that Newsome and Campbell would agree to the existence of so significant a management right when that right did not exist" and that Newsome and Campbell "observed during the [December 14th bargaining session] that [Mike-sell's] had the right to unilaterally change the health care benefits under the Teamsters' contracts, but not under the B&C Union's contract," as well as the bases for these conclusions.

14. Decision, p. 8, lines 4-6, 15-17, 30-47.

The ALJ's conclusion that Wille's account of the December 14, 2011, negotiations session "is made even more implausible by the fact that the purported agreement was not reduced to writing or signed off on by the parties," as well as the bases for this conclusion.

15. Decision, p. 8, lines 15-17, including footnote 5.

The ALJ's conclusion that "[g]iven the magnitude and importance of the reductions, it is simply not credible that Wille, having secured the Union's agreement, would neglect to confirm that agreement in writing," as well as the bases for this conclusion.

16. Decision, p. 8, lines 19-20.

The ALJ's conclusion that Wille "was a less than fully credible witness based on her demeanor and testimony as a whole," as well as the bases for this conclusion.

17. Decision, p. 8, lines 20-28.

The ALJ's finding that Wille "seemed at times overly anxious to give testimony that was supportive of the [Company's] position," as well as the bases for this finding.

18. Decision, p. 8, line 28 to Decision, p. 9, lines 1-7.

The ALJ's finding that Wille "gave the impression of being extremely impatient to see the health care changes implemented for the B&C Unit," as well as the bases for this finding.

19. Decision, p. 9, lines 4-7.

The ALJ's conclusion that "[b]y the time of the December 14 meeting, [Wille's] impatience would have been further aggravated by the Union's resistance to the changes and by the revelation that the November 8 reopening notice was void and that the reopening timelines would run again from Fuller's December 6 letter," as well as the bases for this conclusion.

20. Decision, p. 9, lines 9-10.

The ALJ's conclusion that Campbell and Newsome were "credible based on their demeanor and the record as a whole," as well as the bases for this conclusion.

21. Decision, p. 9, lines 10-24, including footnotes 6 and 7.

The ALJ's conclusions that the testimony of Campbell and Newsome "was quite consistent and mutually corroborative" and that their "post-December 14 behavior was consistent with their testimony that no agreement was reached," as well as the bases for these conclusions.

22. Decision, p. 9, lines 17-24.

The ALJ's conclusions that "[t]here is no obvious explanation for why Campbell and Newsome would agree to the reductions and then turn around and object as soon as [Mike-sell's] distributed paperwork revealing that those reductions had been implemented;" and that "[i]f . . . Campbell and Newsome were trying to delay the implementation of the reductions . . . they would not have agreed to those reductions within minutes of starting negotiations on December 14" but would have instead "refuse[d] to agree and require[d] the [Company] to go through all the steps in the contractual reopening process."

23. Decision, p. 9, lines 39-41.

The ALJ's finding that "[s]ince the [Company] was the party that wished to change the contractual status quo, the Union reasonably saw it as up to the [Company] to move the reopening process forward," as well as the bases for this finding.

24. Decision, p. 9, line 30 to Decision, p. 10, lines 1-3.

The ALJ's conclusion that the handwritten notes of Wille related to the December 14, 2011, negotiations session are "less reliable" than the handwritten notes of Newsome related to the December 14, 2011, negotiations session, as well as the bases for this conclusion.

25. Decision, p. 10, lines 22-25.

The ALJ's conclusion that "the General Counsel has established a violation" because "[t]he record . . . establishes that the [Company] reduced the contractual health care benefits of employees in the B&C Unit without obtaining the Union's agreement and without obtaining an arbitrator's ruling."

26. Decision, p. 10, lines 27-29.

The ALJ's conclusion that "the evidence showed that during the negotiating session on December 14 the [Company] not only failed to secure the Union's agreement to the proposed reductions, but that the Union representatives explicitly stated that they did *not* agree to the reductions."

27. Decision, p. 10, lines 30-31, including footnote 8.

The ALJ's conclusion that Mike-sell's "violated Section 8(a)(5) and (1) when it changed employees' health care benefits on January 1, 2012."

28. Decision, p. 10, lines 33-35.

The ALJ's conclusion that the Union's account of the December 14, 2011, negotiations session was "more credible" than the Company's account of the December 14, 2011, negotiations session, as well as the bases for this conclusion.

29. Decision, p. 10, lines 35-36.

The ALJ's conclusion that, "even if [he] had credited Wille's version of what was said, that would still not show that the Union agreed or consented to have the unit's health care benefits reduced."

30. Decision, p. 10, lines 38-39.

The ALJ's finding that Wille "testified that agreement had been reached regarding the reductions because Newsome said that the [sic] 'the contract did give [Mike-sell's] the right to make the changes.'" (Emphasis added.)

31. Decision, p. 10, lines 39-42.

The ALJ's conclusion that, "[e]ven if Newsome had [stated 'the contract did give the Company the right to make the changes'], it would merely represent his belief—his *mistaken* belief—regarding the [Company's] rights under the CBA, not the Union's agreement or consent to modify either the health care benefits or the reopening process."

32. Decision, p. 11, lines 2-6.

The ALJ's conclusion that, even if Newsome had told Wille that "the contract did give the Company the right to make the changes," and that this statement was based on Newsome's belief that the Company "would prevail if the matter went to arbitration," then that "would still only mean that Newsome had made a prediction about what the [Company] would have the right

to do *after* arbitration,” not that the Company could reduce the benefits “at a time when the parties had not arbitrated the matter.”

33. Decision, p. 11, lines 8-11.

The ALJ’s conclusion that Mike-sell’s “violated Section 8(a)(5) and (1) when, on January 1, 2012, it implemented changes to the contractual health and welfare benefits for employees represented by the B&C Union without following the procedures set forth in the contractual reopening clause and without the Union’s consent.”

34. Decision, p. 11, lines 19-22.

The ALJ’s conclusion that Mike-sell’s “violated Section 8(a)(5) and (1) when, on January 1, 2012, it implemented changes to the contractual health and welfare benefits provided to employees represented by the B&C Union without following the procedures set forth in the contractual reopening clause and without the Union’s consent.”

35. Decision, p. 11, lines 26-42.

The ALJ’s proposed Remedy.

36. Decision, p. 12, lines 1-47 to Decision, p. 13, lines 1-6.

The ALJ’s proposed Order.

37. Decision, at Appendix.

The ALJ’s proposed Notice to Employees.

Respectfully submitted,

*/s/ Jennifer R. Asbrock*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2012, Respondent Mike-sell's Potato Chip Company's Exceptions to the Decision of Administrative Law Judge Paul Bogas was electronically filed through the National Labor Relations Board website (www.nlr.gov), with copies sent to the following in the manner described below:

By Federal Express, overnight delivery, eight (8) copies to:

Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board  
1099 14th Street, NW, Room 5400 East  
Washington, DC 20570

By Federal Express, overnight delivery, one (1) copy each to:

Gary W. Muffley, Regional Director  
National Labor Relations Board Region 9  
3003 John Weld Peck Federal Building  
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Eric Oliver, Esq. and Zuzana Murarova, Esq.  
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*/s/ Jennifer R. Asbrock*  
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