

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**AMGLO KEMLITE LABORATORIES, INC.**

**and**

**CASE: 13-CA-065271**

**BEATA OSSAK, An Individual**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S REPLY BRIEF TO  
RESPONDENT'S ANSWERING BRIEF TO COUNSEL FOR THE ACTING  
GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE  
ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46(h) of the National Labor Relations Board's Rules and Regulations, Counsel for the Acting General Counsel files this Reply Brief to Respondent's Answering Brief.<sup>1</sup>

In Respondent's Answering Brief to the Counsel for the Acting General Counsel's Exceptions to the Decision of the ALJ, Respondent incorrectly posits, inter alia, that the Acting General Counsel failed to allege, litigate or argue as independent 8(a)(1) violations Respondent's numerous and threats of reprisal and discharge. Respondent's argument is unpersuasive.

Respondent first argues that Counsel for the Acting General Counsel relies on Respondent's managers' unlawful statements as the crux of its discharge case (in demonstrating that Respondent fired its work force for stopping work to protest their low rate of pay and

<sup>1</sup> In this Brief, the Administrative Law Judge will be referred to as "the ALJ", the National Labor Relations Board will be referred to as the "Board," and Amglo Kemlite Laboratories, Inc. will be referred to as "Respondent." Citations to the ALJ's Decision will be referred to as "ALJD" followed by the specific page(s) and line(s) referenced. With respect to the record developed in this case, citations to pages in the transcript will be designated as "Tr." followed by the page number. The General Counsel's exhibits will be designated as "GC" followed by the exhibit number. Respondent's exhibits will be designated as "R" followed by the exhibit number. Citations to the Counsel for the Acting General Counsel's Post-Trial Brief will be referred to as "GC PTB" followed by the page number. Citations to the Counsel for the Acting General Counsel's Brief in Support of its Exceptions to the ALJD will be referred to as "GC Brief to Exceptions" followed by the page number.

longstanding wage freeze). Respondent then argues that the same threatening statements used to prove the discharge case do not and cannot independently violate Section 8(a)(1) of the Act, and that Counsel for the Acting General Counsel failed to raise these independent 8(a)(1) threats at the trial or in the post hearing brief.

However, the evidence shows that Respondent is merely splitting hairs by arguing that the multiple acts and statements strung together to support a finding of discharge in violation of Section 8(a)(1) cannot also serve as the basis for finding independent violations of Section 8(a)(1) of the Act. From the complaint to the opening statement to the witness testimony to the brief and the requested Notice posting language in the proposed remedy, Counsel for the General Counsel raised, litigated and argued that independent 8(a)(1) violations should be found herein.

Complaint paragraph IV(b) specifically alleges an independent 8(a)(1) threat, in that around September 20, 2011, Plant Manager Anna Czajkowsk[a] threatened employees that things would not end well for them if they continued to engage in the protected concerted strike. GC 1(e). At the hearing, Counsel for the Acting General Counsel clearly articulated in the opening statement that the evidence would show, inter alia, that independent 8(a)(1) statements had been made as a part of the overall scheme to discharge the employees in response to their work stoppage. Tr. 11, Ins 6 – 16 (...the evidence will show that management responded to the group of employees by stating...that they needed to get back to work or else sign resignation papers and to get out of the facility, that they were only going to lose); Tr. 12, Ins 7 – 9 (...they were also told by Czajkowska that they had fired themselves, to get off the property). Further, Counsel for the General Counsel specifically proposed in the remedy section of its brief to the ALJ that the notice to employees address the independent 8(a)(1) threats.<sup>2</sup>

<sup>2</sup> **WE WILL NOT** tell our employees, in retaliation for engaging in a protected concerted strike, that you are fired, you fired yourself, resign, your work can easily be transferred to our Mexico facility and we can get rid of half of

Respondent's argument that it lacked an adequate opportunity to defend against the independent 8(a)(1) violations completely fails. All of the statements made by Respondent's managers were fully and vigorously litigated at the hearing, as they constituted an integral part of the case that the employees were wrongfully terminated. Each of the Acting General Counsel's witnesses were cross-examined by Respondent. Moreover, Respondent presented a full defense through its own witnesses and presented witnesses to respond to each of the independent threats raised during Counsel for the Acting General Counsel's case. For example, during Respondent's direct examination of Plant Manager Czajkowska, Czajkowska testified, "No. I didn't use any word fire," but rather put a resignation form in front of the mass group of employees and stated, "Just sign the [resignation] paper and you can go." Tr. 200, ln 11, Tr. 208, lns 13 – 14. Respondent's President Izabella Christian was likewise examined by Respondent's counsel and was similarly given full opportunity to rebut prior testimony adduced from the Acting General Counsel's credited witnesses.

Further, the testimony adduced by credited Respondent employees corroborates the independent 8(a)(1) violations outlined in Counsel for the Acting General Counsel's complaint and opening statement. Respondent argues that there is no basis in the record that Czajkowska told the employees that they were going to lose, yet the transcript clearly reads otherwise, as summarized in an excerpt from Counsel for Acting General Counsel's Post-Hearing Brief to the ALJ as follows:

One of the employees asked Czajkowska and Christian if they could speak to the owner of the company, Jim Hyland. (Tr. 84, 127). Czajkowska responded by threatening that Hyland would tell Czajkowska and Christian to get rid of half of the employees. (Tr. 128). Czajkowska continued to intimidate and threaten the employees by telling them, you are not going to do anything, you are not going to

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you, you will lose.

**WE WILL NOT** threaten you with other unspecified reprisal if you engage in activity with other employees regarding your wages, hours, and working conditions.

threaten Hyland, *you are going to lose*. (Tr. 128) (emphasis added). Christian also told the employees that Hyland does not care about you “Polish” people like he used to. (Tr. 85, 132). Christian asked the employees if they understood the term “globalization” and if the employees knew that the owner has four other companies on different continents. (Tr. 131). Christian then threatened the employees by stating that other companies are moving production to Mexico, it would be so easy for Hyland to make a decision, and it is so strange that you employees don’t know what Hyland would do at that point with you. (Tr. 131). GC PTB, p. 5.

As such, these 8(a)(1) statements, as well as other threats adduced during Counsel for the Acting General Counsel’s case, were fully litigated at the hearing and raised in the Post-Trial Brief to the ALJ. In *Benesight, Inc., F/K/A The TPA, Inc.* (referenced in both the Post-Trial Brief to the ALJ and the Acting General Counsel’s Brief in Support of its Exceptions to the ALJD), the Board holds that an employer violates Section 8(a)(1) of the Act when it threatens and when it discharges employees for engaging in a strike or other protected work stoppage. 337 NLRB 282, 283 (2001); GC PTB, p. 13, GC Brief to Exceptions, p. 16, 21.

Moreover, the ALJ was well aware of the independent 8(a)(1) statements, as he denied a motion during the hearing to amend the complaint to add an additional 8(a)(1) statement because in his view it was superfluous.<sup>3</sup> Tr. 366, lns 11 – 25, Tr. 367, lns 1 – 5. To this end, the ALJ made several factual findings that managers Cszakowska and Christian each threatened their employees on numerous occasions. However, though the ALJ specifically found that Cszakowska and Christian made these independent violative 8(a)(1) threats, the ALJD failed to provide a specific remedy for said independent threats, a point currently at issue addressed by Counsel for the Acting General Counsel in its Exceptions filed with the Board in this matter.

For the reasons delineated above, the Respondent’s contention that there are no independent violations of Section 8(a)(1) of the Act fails. Counsel for the Acting General

<sup>3</sup> In support of his decision to deny the Acting General Counsel’s on-the-record motion to amend the Complaint, the ALJ noted that alleging additional 8(a)(1) allegations was “six of one, half dozen of the other” and that it is unnecessary to amend where there is already 8(a)(1) statements in the record. Tr. 366 – 67).

Counsel therefore respectfully requests that the Board reject Respondent's argument and that it find merit to Counsel for the Acting General Counsel's Exceptions to the ALJD.

Respectfully submitted,

/s/ Cristina M. Ortega *filed electronically*

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**CERTIFICATE OF SERVICE**  
**13-CA-065271**

I certify that on this 21st day of August 2012, a true and correct copy of Counsel for the Acting General Counsel's Reply Brief to Respondent's Answering Brief to Counsel for the Acting General Counsel's Exception to the Decision of the Administrative Law Judge was served upon the following parties in the manner indicated below:

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