UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN WATER WORKS COMPANY, INC.
a/k/a AMERICAN WATER WORKS SERVICE
COMPANY, INC., and its subsidiaries,

Respondent

and **Case No. 29-CA-30676**

UTILITY WORKERS UNION OF AMERICA,
AFL-CIO

Charging Party

COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE DECSION AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

Preliminary Statement

On November 13, 2012, American Water Works Company, Inc. a/k/a American Water Works Service Company, Inc., and its subsidiaries, ("Respondent") filed Exceptions to the October 16, 2011, Decision and Recommended Order ("ALJD") of Administrative Law Judge Steven Davis and a Brief in Support of its Exceptions ("Brief"). Pursuant to the National Labor Relations Board ("Board") Rules & Regulations Sec. 102.46(d)(1), Counsel for the Acting General Counsel submits this Answer to the Respondent's Exceptions.

As a matter of procedure, Board Rules & Regulations Sec. 102.46(b)(1) states that if a "supporting brief is filed the exceptions document shall not contain any argument or citation of authority in support of the exceptions, but such matters shall be set forth

only in the brief." Respondent has filed a Brief in Support of its Exceptions. Notwithstanding, nearly all of Respondent's Exceptions contain argument and citations to authority. Specifically, Respondent's Exceptions 2, 3 and 4 contain argument disputing the ALJ's factual findings. Likewise, Respondent's Exceptions 5 and 6 contain argument relating to its contention that the Charging Party Union did not have authority to act for the other unions, and, that no state mediation agency had jurisdiction over this dispute. Finally, Respondent's Exceptions 7 through 14, all of which relate to the ALJs legal analysis and conclusions, contain both argument and citation to authority. Respondent's failure to follow this simple and longstanding rule makes it more difficult for the other parties to respond to its position because it requires that that we shuttling back and forth between two documents containing Respondent's position and argument. Further complicating matters is Respondent additional failure to follow Board Rules & Regulations Sec. 102.46(j), requiring that its brief of more than 20-pages contain a subject index with page references and an alphabetical table of cases and other authorities cited. Based on the foregoing failures on the part of Respondent, it is respectfully urged that Respondent's Exceptions, and the respective arguments raised in Respondent's Brief, be stricken.

Background Facts:

Respondent, by and through its subsidiaries, operates a water utility that employs about 3,500 unionized employees working in fifteen different states, including California, Illinois, New Jersey, and Pennsylvania. (GC Ex. 1(o), Tr. 15). Respondent's principal offices are located in New Jersey. (Joint Ex. 1, ¶ 2). Employees affected by the instant dispute are represented by different international and local unions, including the Utility Workers Union of America, "the Charging Party Union," which filed the underlying unfair labor practice charge and the amended charges. (Tr. 15, GC Ex. 1(a), 1(c) and 1(e)).

Respondent and the local unions negotiate individually over local collective-bargaining agreements covering some terms and conditions of employment, including wages. (Tr. 29). However, for several decades, Respondent and the unions have negotiated medical and other benefits on a national level with a committee of representatives of the various international unions. (Joint Ex. 1, ¶ 7). This committee has historically been led by the Charging Party Union, which represents about 2,500 of the 3,500 unionized employees. (Joint Ex. 1, ¶ 7, Tr. 15-16). The most recent NBA between the Respondent and the various labor organizations was effective from August 1, 2005 through July 31, 2010. (Joint Ex. 1, Exhibit A). The NBA is signed by Respondent, the Charging Party Union, as well as representatives from the Fireman & Oilers, SEIU, AFL-CIO, the Laborers' International Union of North America, AFL-CIO, the United Steel Workers of America, AFL-CIO, the International Brotherhood of Electrical Workers, AFL-CIO, and the United Association of Plumbers and Pipefitters. (Joint Ex. 1). The most recent NBA provided all covered employees with life insurance, health insurance benefits, including vision and dental benefits, prescription drug coverage, pension benefits, a 401(k) plan, retiree health benefits (a/k/a VEBA benefits) and short term disability benefits. (Joint Ex. 1, ¶ 8).

The ALJ's Decision:

Briefly stated, the ALJ concluded that Respondent failed to notify any state mediation agency of the instant dispute prior to its unilateral implementation of its Last Best and Final Offer ("LBFO"), in violation of Section 8(a)(1) and (5) of the Act. (ALJD 11). The ALJ rejected Counsel for the Acting General Counsel's argument that Respondent also failed to properly notify the FMCS of the dispute but as of date, no exceptions to that conclusion have been filed.

General Section 8(d) Principles

Section 8(d) defines the duty to collectively bargain, and includes a special proviso that attaches to that duty when the employer and union are already parties to a collectively-bargained contract. Specifically, if a party to a collective-bargaining agreement wishes to "terminate or modify" the agreement, the duty to collectively bargain requires that:

> [T]he party desiring such termination or modification—
>
> (1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;
>
> (2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;
>
> **(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time;** and
>
> (4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later[.]
>
> 29 U.S.C. § 158 (d) **(Emphasis added).**

It is well-settled that the burden of fulfilling this proviso's requirements is placed only on the party that desires to terminate or modify the collective-bargaining agreement, that is, on the party "taking the lead in refusing the old contract . . . ." S. Rep. No. 80-105, at 24 (1947). The Board and the courts have read Section 8(d) as "expressly

putting the responsibility for giving the required notices upon the party to the contract who raises the possibility of industrial conflict by moving to open up the existing contractual arrangements." NLRB v. United Furniture Workers of Am., 336 F.2d 738, 741 (D.C. Cir. 1964), *enforcing* Fort Smith Chair Company, 143 NLRB 514 (1963). Once a party initiates bargaining, the burden of complying with the Section 8(d)(3) notice requirements remains with that party throughout negotiations, and will not shift to the other party under any circumstances. Fort Smith Chair Company, 143 NLRB at 516 (finding the union to be the initiating party despite the fact that it had retreated from its initial position and now only sought the status quo). Otherwise, were the burden to shift dependent on the unpredictable course of bargaining, it would introduce the "disquiet" of a potential lock-out or strike into what is supposed to be a cooling-off period. Id. Furthermore, by permanently assigning the Section 8(d) notice burden to "the party who voluntarily elects to put these events in train," Congress ensured that the notice provision would not be lost among the frequently fluctuating bargaining positions of the negotiating parties. NLRB v. United Furniture Workers of Am., 336 F.2d at 741. In addition to notifying the FMCS, the initiating party must also notify **any** state mediation agency of the existence of the dispute. Mar-Len Cabinets, Inc., 243 NLRB 523, 534 (1979) (finding that simply because the employer had notified the FMCS did not excuse it from notifying the state agency), *enforced in relevant part by* NLRB v. Mar-Len Cabinets, Inc., 659 F.2d 995 (9th Cir. 1981).

Respondent Initiated Bargaining:

Respondent excepts to the Administrative Law Judge's finding of fact and law that Respondent was the party that initially sought to modify the expiring collective bargaining agreement. (See Respondent Exceptions 2, 5, 7 and 8, ALJD 7-9). In support of its position that the ALJ erred in reaching these conclusions, Respondent first

incorrectly asserts in Exception 2, 5 and 7(c) that the Union National Benefits Committee is a party to the expiring NBA. While the parties stipulated that the Union National Benefits Committee engaged in bargaining on behalf of the unions involved, the bargaining Committee it is not actually a party to the expiring NBA. (Joint Ex. 1, ¶ 7, 8). Rather the signature page of the NBA clearly demonstrates that the Charging Party Union, and each of the other individual unions, are all parties to the expiring NBA, not the bargaining committee. (Joint Ex. 1). Consequently, Respondent's argument that its initial contact with the Charging Party Union, one of the many parties to the NBA, had no legal effect is fatally flawed and must be summarily rejected.

The record evidence adduced at the Hearing also supports the ALJ's factual finding that Respondent was the party that initially sought to modify the contract. (ALJD 7-8). In this regard, Michael Langford, President of the Charging Party Union, provided uncontroverted testimony that sometime during the Spring of 2009, more than a year before the NBA's 2010 expiration date, he received a telephone call from Robert McKeage, Respondent's Director of Labor and Employee Relations. (Tr. 14, 16, 129). According to Langford, during their conversation, McKeage asked Langford to meet for the purpose of getting "the ball rolling, to get a jump start, expedite early negotiations around the National Benefits Agreement." (Tr. 16, lines 22-23). Thus, the parties met in the middle of June 2009, at the Union's office in Washington, D.C. (Tr. 17). At that session, McKeage essentially repeated Respondent's position that it wanted to start negotiations for a successor NBA. (Tr. 18, 31). The ALJ properly relied on unrebutted testimony that McKeage told the Union's representatives that he wanted to create a time line for bargaining, resolve the logistics, promised to provide the Charging Party Union with updated contact information and stated generally that Respondent wanted to move forward with meetings and with Union information requests. (ALJD, pg. 8, Tr. 18, 19, 31-33 and GC Ex. 2). With regard to information requests, McKeage also stated that he

wanted to establish a timeline concerning those information requests, initially setting a deadline for December 2009. (Tr. 21, 31, GC Ex. 2). While the parties did not discuss any specific proposals at this meeting, Sean Burke, another one of Respondent's representatives at the meeting, raised the cost of healthcare as its primary concern, stating that it wanted to make changes in the healthcare plan, that such changes would be a major issue for them at the bargaining table, and that Respondent needed to get some relief from the current healthcare costs. (Tr. 24, 31-32). Langford also testified that Respondent specifically stated that it would propose that employees pay more for their healthcare benefits at bargaining. (Tr. 18). At the end of this session, McKeage proposed another meeting with the Charging Party Union. (Tr. 19-20).

Before the parties met for the second time, McKeage sent the Charging Party Union a written electronic mail dated June 29, 2009, the subject of which was "National Benefits Negotiations Summary." (GC Ex. 2). In this writing, McKeage summarized the meeting discussed above and dictated the steps the parties would take before their next meeting. (GC Ex. 2). Subsequently, Respondent sent another written electronic mail to the Charging Party Union dated November 29, 2009, with an attachment prepared by Respondent. (GC Ex. 3). In this writing, Respondent set forth additional actions the parties need to take prior to their December 3, 2009 meeting. (GC Ex. 3). McKeage also wrote that he would communicate to the Charging Party Union who would serve on Respondent's bargaining committee, propose a schedule for bargaining, define the data sources, raise the subject of pay for union officials at negotiations and establish some ground rules, including communications, info requests and start times. (GC Ex. 3).

At the subsequent meeting on December 3, 2009, the parties worked off of Respondent's writing noted above. (Tr. 36, GC Ex. 3). They discussed dates for bargaining, the possibility of union information requests and some ground rules. (GC Ex. 3, Tr. 37). At this meeting, Respondent imposed a February 26, 2010 deadline for

any Union information request. (GC Ex. 3, Tr. 37). Thus, on February 26, 2010, the Charging Party Union sent Respondent its request for information related to the upcoming bargaining. (GC Ex. 4, Tr. 38-39). In that request, the Charging Party Union asked for various kinds of information related to the benefits received by all bargaining unit employees. (GC Ex. 4, Tr. 38-39).

On April 8, 2010, Respondent sent the Charging Party Union another electronic mail listing the dates for full bargaining sessions. The dates established were May 4-5, May 25-27, June 22-24, and July 12-15. (GC Ex. 6). Respondent also included all of the hotel arrangements made by Respondent. (GC Ex. 6). The Charging Party Union's only input on the selection of the hotels was limited to its request that the hotels selected be union represented hotels. (Tr. 83). As set forth in the record, full bargaining commenced on May 4 in Linthicum, Maryland. (Tr. 43, GC Ex. 6). Consistent with its role as the initiating party, Respondent took the lead when Sean Burke gave his opening remarks on behalf of Respondent. (Tr. 43, 45). Management official Sean Burke commented that Respondent was concerned with the rising cost of healthcare and stated that Respondent needed to cut its costs at these negotiations. (Tr. 45). After lunch, Respondent continued to act as the initiator and offered its initial proposals, which included modifications to a number of the terms contained in the NBA, including the contract term, the 401(k) plan, retiree health insurance eligibility, the VEBA contribution, the vision plan, the dental plan, and the health care plan. (Tr. 44, GC Ex. 7). Respondent then explained each of its proposals to the Union. (Tr. 46). After Respondent finished explaining its initial proposals, the Charging Party Union provided Respondent with the Union Committees' proposals for improvements to employees' benefits (Tr. 48, GC Ex. 8).

Thereafter, the parties met as scheduled in Philadelphia, Pennsylvania (May 25-27) and Linthicum Heights, Maryland (June 22-24 and July 12-15). (Tr. 43, GC Ex. 6).

The parties were unable to reach an agreement and scheduled additional bargaining in Chicago, Illinois (August 17 -19), Baltimore, Maryland (September 16) and Philadelphia, Pennsylvania (end of September 2010). (Tr. 68, 72). Further consistent with its role as the initiator, Respondent, by McKeage, sent the Charging Party Union a letter stating that Respondent would contact FMCS for the assistance of a mediator once the unions selected the location for the next meeting. (GC Ex. 10). McKeage testified that he subsequently called the FMCS office located in Chicago and spoke with a mediator. (Tr. 130). It was stipulated that a mediator from FMCS did appear at part of the parties' bargaining session on August 17, 18 and 19, 2010, in Chicago, and also at the September 16, 2010, session in Maryland. (Joint Ex. 1, ¶14).

Based on all of the foregoing, the ALJ correctly determined that Respondent was the party that initiated bargaining because it was the party that deliberately reached out and asked to open negotiations. (ALJD 7-9). The ALJ also correctly concluded that from that point on, Respondent aggressively took charge of arranging meeting dates and locations, setting deadlines for information requests and expressing its main areas of concern at their first meeting. (ALJD 8-9). Moreover, the record establishes that throughout the course of subsequent bargaining, Respondent continued to act as if it was the initiating party, by offering written proposals first when full bargaining commenced, and subsequently writing to Charging Party Union on July 20, 2010, and informing it that it would contact FMCS. (GC Ex. 10). Respondent subsequently did verbally notify FMCS of the dispute when negotiations dragged on. (Tr. 130, ALJD 7-9).

The ALJ's conclusion that Respondent was the initiating party is also supported by relevant cause law. In Nabors Trailers, the Board adopted an ALJ's conclusion that the employer was the initiating party because it sent the traditional written notice stating that it wanted to open contract negotiations. 294 NLRB 1115, 1120 (1989) (finding that the employer violated § 8(a)(1) and (5) by unilaterally implementing changes without

notifying the appropriate mediation agencies), *enforced in relevant part by* 910 F.2d 268 (1990). In so finding, the ALJ also noted that the employer even acted like an initiator by contacting the FMCS when negotiations began to drag on. *Id.* at 1120. According to the ALJ, such behavior indicated that the employer considered itself the initiating party. *Id.* Thus, in spite of whatever verbal representations the union made about its desire to open negotiations, the employer there had been the one to actually send writing, and would have done so regardless of what the union said. *Id.*

The instant case presents a novel question since neither party here sent the other party a traditional written Section 8(d)(1) notice seeking to open negotiations. Rather, as determined by the ALJ, Respondent was the initiator by virtue of all of its conduct outlined above, which included both verbal and written conduct, including McKeage's statement that he wanted to expedite negotiations. (Tr. 16, ALJD 7-8). This conduct clearly shows that Respondent was the party who voluntarily raised the possibility of industrial conflict by moving to open up the existing contractual arrangements by reaching out via telephone and electronic mail, making it clear that it wanted to open negotiations. Policy considerations dictate a finding that Respondent was the initiating party and bore the responsibility for notifying the FMCS and the state agencies. NLRB v. United Furniture Workers of Am., 336 F.2d 738. Indeed a finding that neither party initiated bargaining would lead to a conclusion that neither party was required to fulfill Section 8(d)(3)'s requirement to notify the FMCS and any state mediation agency before implementing a LBFO, a strike or a lockout. Such an outcome would only serve to increase the possibility of labor conflict and provide incentives to parties to engage in gamesmanship designed to avoid this important statutory obligation.

In Exception 2 and 7(d), Respondent also excepts to the ALJs factual and legal conclusions rejecting Respondent's argument that the February 28, 2010, information request was the first written communication among the parties seeking to open

negotiations. (ALJD 9). The ALJ was correct in rejecting Respondent's assertion that this request for information was the first written communication among the parties seeking to open negotiations. (ALJD pg. 9). As set forth above and outlined by the ALJ in his decision, Respondent had already initiated bargaining in the Spring of 2009 when McKeage reached out to the Charging Party Union and stated that Respondent wanted to expedite early negotiations. The Charging Party Union is a party to the NBA, not the Union National Benefits Committee, and by virtue of this conduct, Respondent already notified one of the unions, indeed the union that represented a majority of employees affected and stated that it wanted to modify the existing CBA.

Notification to the State Mediation Agencies:

Respondent's exceptions 3, 4, 6, 8, p, 10, 11, 13, 14 and 15, all relate to Respondent's contention that the ALJ made factual and legal errors when he determined that Respondent failed to notify any state agency of the existence of this dispute prior to the unilateral implementation of its LBFO. Section 8(d)(3) of the Act states that a party must notify the FMCS and "simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time..." 29 U.S.C. 158 (d)(3). As set forth in the Amendment to the Complaint, Respondent employed employees who were covered by the expired NBA working in fifteen different states, including employees working in nine (9) bargaining units in Pennsylvania, five (5) bargaining units working in New Jersey, fourteen (14) bargaining units working in the Illinois and four (4) bargaining units working in California. (GC Ex. 1(o), Amended Complaint, Appendix p. 1-5).

Specifically, in Exception 3, Respondent argues that the ALJ erred when reaching certain conclusions concerning the procedures and practices of the state

mediation agencies. (ALJD, p. 6, line 17 through ALJD at 7, line 6). Respondent first asserts that the testimony of individuals representing those agencies and the "hypothetical" evidence pertaining to their mission is irrelevant and immaterial to the instant matter. This argument should be rejected since the statute requires that the initiating party contact those agencies regarding the dispute, and therefore, some testimony is relevant and material in order to illustrate the process required by the statute's notice provisions. Indeed, in prior cases, the Board and the courts have considered defenses based on the alleged futility of such reporting, especially, where as here, a respondent failed to notify a state agency. See Phelps Dodge Corp., 130 NLRB 1147 (1961) (where the Court of Appeals for the Ninth Circuit set aside the Board's order in part (50 LRRM 2015 302 F. 2d 198) and found that no mediation and conciliation service existed in the state of Arizona within the meaning of Section 8(d)(3); see also Amalgamated Meat Cutters (AFL-CIO) Local 576,140 NLRB 876, 879 (1963), a case cited by the ALJ, where the Board rejected similar contentions, finding that the Kansas Legislature had provided the State Labor Board with funding to operate. (ALJD p.10). As discussed below, the evidence from the state mediation agencies in this case show that New Jersey, Pennsylvania, Illinois and California all have functioning state agencies that Respondent was required by statute to notify of the instant dispute.

Respondent further argues in Exceptions 3, 4, 6, 9, 10, and 11 that it was not required to notify any of the state agencies since no state agency had jurisdiction, or even the funds, to send a mediator to a different state in the first place. The record testimony is to the contrary. Specifically, William Gross, the Bureau Director of the Bureau of Mediation of the Commonwealth of Pennsylvania Department of Labor testified that he supervises mediators working for the Bureau of Mediation, and if the Commonwealth received notice of regarding these negotiations, he would have assigned a mediator, or offered mediation services to the parties. (Tr. 107, 108). Gross further

testified that had the Commonwealth been asked to assign a mediator in instances where, as here, an employer employs individuals who work inside and outside of the Commonwealth, his office would still have assigned a mediator and offered services to these parties. (Tr. 108, 112). Similarly, Earnest Whelan, who testified on behalf of the New Jersey State Board of Mediation, stated that when his office receives notice of a dispute, it sends a letter to the parties offering its services. (Tr. 115). In this instance, Whelan noted that even though this case may involve many states, the New Jersey State Board of Mediation would have sent its standard letter offering its services to the parties, just as it has in the past in instances where multi-state units are involved. (Tr. 117, 118). Whelan further testified that his office can send its mediators to Pennsylvania, New York, and/or Delaware. (Tr. 117). He also noted that his office often co-mediates disputes with FMCS mediators. (Tr. 120). Thus, the Board should reject Respondent's argument that it had the authority to pick or choose whether or not to comply with the statute based upon its unfounded assessment that the state agencies would not, or could not, appear. Illinois and California also had mediation agencies that provided mediation services to parties at the time of the instant dispute. (GC Ex. 16 and 17).

Respondent's Exception 6 must be rejected because it is premised on facts that are not in the record. In this Exception, Respondent asserts that it was not required to notify any state agency because no agency had jurisdiction over this multi-state dispute since no state had more than a relatively small minority of employees involved. The record is void of any facts establishing the specific number of employees employed in each of the states. Rather, the record only shows the number of bargaining units in each one of the states. Notwithstanding this, even assuming that Respondent could establish which state had a majority of employees (which it cannot), there is no case law

supporting its argument that an employer operating in several states need only notify the state in which a majority of its employees are working.

Respondent Exceptions 9, 10, 11 and 13 essentially argue that it was not required to notify any state agency because Section 8(d)(3) only requires notice by the initiating party only to a state mediation agency "within the State ... where the dispute occurred". According to Respondent, the ALJ's analysis that the dispute involved here occurred in each of the states where there is a collective bargaining agreement set to expire was inappropriate because no one state in this case could assert jurisdiction outside of its own state. (ALJD at 10, 11). Respondent's view of its obligation to notify the state agencies appears to be based, in large part, on its misunderstanding of where this dispute occurred. This case involves the terms and conditions of employment for employees working in 66 different bargaining units, not just one national bargaining unit. (GC Ex. 1 (o)). Thus, as correctly determined by the ALJ, the dispute in this case occurred in each and every state where employees are working. Put another way, the dispute occurred in each one of the separate units that are covered by the agreement. Indeed, Respondent's unilateral implementation of its LBFO affected employees in each and every one of the units listed in the Amendment to the Complaint, just as would any subsequent strike on part of the employees. Moreover, should employees chose to strike, they will strike each of the locations listed in the Amended Complaint, and not only in the states where the parties engaged in bargaining, or where a majority of the employees work. For these reasons, Respondent was required to notify all of the state mediation boards of the instant dispute.

Finally, Respondent's argument in its exceptions that no state could assert jurisdiction outside of its own state also misses another fundamental point in this case. The purpose of the statutory requirement to notify *any state mediation agency* is to

afford the state agencies an opportunity to determine whether it will offer its services related to the disputes affecting employees within its own state. There is no basis to concluded that any state would not, or could not, have asserted jurisdiction over the disputes within their own state simply because there were other disputes located outside of their state, as alleged by Respondent in Exceptions 9, 10 and 11.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the Board affirm the ALJ's determination that Respondent did not fulfill its obligations to notify any of the state mediation agencies before implementing new terms and conditions of employment as required by Section 8(d)(3), and that the January 1, 2011, unilateral implementation of its LBFO violated Section 8(a)(1) and (5) of the Act.

Dated December 20, 2012, at Brooklyn, New York.

Respectfully Submitted,

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FORM NLRB-877
(2-81)

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AMERICAN WATER WORKS COMPANY INC. **A/K/A AMERICAN WATER WORKS SERVICE COMPANY, INC., and its subsidiaries,** **Respondent** **and** **UTILITY WORKERS UNION OF AMERICA, AFL-CIO**	**Case No.: 29-CA-30676**

Date of E-FILING: DECEMBER 20, 2012

COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled documents(s) by electronic mail upon the following persons, addressed to them at the following addresses:

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Subscribed and sworn to me this
December 20, 2012

DESIGNATED AGENT

/s/ Tara A. O'Rourke

NATIONAL LABOR RELATIONS BOARD