

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

In the Matter of)	
)	
SPRINGFIELD DAY NURSERY,)	NLRB Case Nos.: 01-CA-062517
a/k/a SQUARE ONE,)	01-CA-064951
Employer,)	01-CA-064955
)	01-CA-064961
and)	01-CA-074917
)	01-CA-079132
UNITED AUTOMOBILE, AEROSPACE AND)	
AGRICULTURAL IMPLEMENT WORKERS)	
OF AMERICA, AFL-CIO, LOCAL 2322,)	
Charging Party.)	
)	

**EMPLOYER’S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE’S
RECOMMENDED DECISION AND ORDER**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the Employer, by and through its undersigned counsel, hereby files the following Exceptions to the Decision of Administrative Law Judge Rosas (“ALJ”) in the above-captioned matters:

- A. The Findings And Conclusion That Employer Violated The Act By Its Use Of Non-Union Substitute Workers, Including The Following:
 - 1. The finding that “[a]pproximately 6 years passed without any major disagreement as to the Employer’s classification of employees until 2009” (ALJD 6:9-10).¹
 - 2. The failure to find that the Employer has made substantial efforts to qualify non-unit employees to become certified as bargaining unit teachers (ALJD 7:29-8:1).

¹ Citations to the Administrative Law Judge’s decision are as follows: ALJD page:line.

3. The finding that the arbitrator found that the Employer's actions violated the National Labor Relations Act (ALJD 7:16-18).
4. The finding that the Employer was able to staff the centers almost exclusively with teachers and lead teachers until 2008 (ALJD 8:12-13).
5. The finding that there has been a diminution of unit classroom staff with a concomitant increase in the use of substitutes since 2009 and the statistics used by the ALJ to support that finding (ALJD 8:17 – 9:15).
6. The finding that the Employer had an affirmative obligation to “offer to reclassify” employees into vacancies for which they did not apply, upon attainment of the proper certification (ALJD 9:1-4 & fn. 46).
7. The failure to find that, in order to qualify for a regular bargaining unit position, a substitute or temporary employee had an affirmative obligation to actually apply for a current vacancy, for which s/he was qualified (ALJD 9:1-4 & fn. 46).
8. The finding that most of the [49] employees hired as substitutes worked more than 10 hours per week, based on the timesheets of only 13 of those employees (ALJD 9:14-15 & fn. 52).
9. The finding that substitute teachers are assigned regular schedules (ALJD 10:4-19).
10. The failure to find that non-unit employees who are assigned to regular schedules are “temporary employees” within the meaning of the collective bargaining agreement and not misclassified, except on that basis (ALJD 10:4-19).

11. The failure to give any weight whatsoever to the clear and unambiguous contract language giving the Employer “unrestricted discretion” to use substitute and temporary employees (ALJD 23:9-11).
12. The finding that “day to day” means that work is scheduled from one day to the next, without considering the past practice of the parties (ALJD 23:14-15).
13. The failure to find that the Union waived its right to bargain over the use of substitute employees (ALJD 23:26-42).
14. The finding that the Employer systemically failed or refused to fill teacher vacancies (ALJD 24:16-19).
15. The finding that the Employer’s failure to classify substitute employees as part-time teachers and van drivers constituted a unilateral change in violation of Section 8(a)(5) (ALJD 22:30 – 24:33).
16. The finding that all substitutes who work more than ten (10) hours in a week were eligible to be members of the bargaining unit, regardless of the employee’s length of time in that status, whether there was a posted vacancy during his or her employment, whether the employee was qualified for a vacancy, and whether the employee chose to remain a substitute (ALJD 22:30 – 24:33).
17. The finding that any substitute who worked more than ten (10) hours in a week is entitled to a remedy (ALJD 22:30 – 24:33).
18. The failure to find that the Union had clear and unequivocal notice of the Employer’s practices with respect to substitutes more than six months prior to the filing of the charge and that the charges should be dismissed under Section 10(b) of the Act (ALJD 25:10-28).

19. The finding that the Employer sought deferral of the charges to arbitration (ALJD 25:31-33).
20. The finding that the case involves issues of statutory policy other than contract interpretation (ALJD 26:19-20).
21. The finding that the contract language is clear and unambiguous (ALJD 26:25-30).
22. The finding that “[b]y failing to provide contract benefits to certain employees hired since March 21, 2011, to wit, substitute van drivers and all employees hired as substitute teachers who worked regularly more than 10 hours per week, the Employer has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.” (ALJD 31:22-27).
23. The failure of the ALJ to properly apply Board case law under Section 8(d) of the Act.
24. The failure of the ALJ to find that the Union’s unfair labor practice charges as to the Employer’s use of substitutes was principally an effort to undermine the “unrestricted discretion” provision of the collective bargaining agreement.
25. The finding that the Employer “essentially schemed to sidestep the bargaining unit by consistently employing substitutes in lieu of bargaining unit employees.” (ALJD 31:9-10)

B. The Findings And Conclusions That Employer Violated The Act By Its Employment Termination Of Dorothy Wilson, Including The Following:

26. The finding that the email message regarding the decision to terminate Dorothy Wilson was not preceded by any counseling, warning or other form of communication to Wilson regarding her performance (ALJD 17:23 – 18:2).
27. The finding that Anthony Buijnarowski did not document Dorothy Wilson's performance issues (ALJD 18:13 fn. 112).
28. The finding that Dorothy Wilson engaged in protected concerted conduct by submitting a dues authorization card to the Employer (ALJD 30:15-16).
29. The finding that the Employer discharged Dorothy Wilson for discriminatory reasons in violation of Section 8(a)(3) and (1) (ALJD 30:39-41).

C. The finding that the Employer violated Section 8(a)(5) and (1) of the Act because it did not effectively repudiate the issuance of new sick leave and vacation policies for employees of the Transportation Department (ALJD 21:20-26).

D. The ALJ's proposed Remedy and Order as to the allegedly unlawful use of non-unit substitute employees.

Respectfully submitted,

SPRINGFIELD DAY NURSERY,
a/k/a SQUARE ONE

By its Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2013, the foregoing **Employer's Exceptions to the Administrative Law Judge's Recommended Decision and Order** was sent, via electronic mail, to the following:

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