

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

COUNCIL 30, UNITED CATERING,  
CAFETERIA AND VENDING WORKERS,  
RWDSU/UFCW

Respondent

and

Case No. 7-CB-083076  
ALJ Arthur J. Amchan

LORAINÉ WHITFIELD-SCUSSEL, an  
individual

Charging Party

and

AWREY BAKERIES, LLC,

Party in Interest.

---

**RESPONDENT UNION'S EXCEPTIONS**

**I. INTRODUCTION**

The Administrative Law Judge's (ALJ) Decision in this case is an unprecedented and wholly unsupported expansion of current Board law governing Section 8(b)(1)(B) of the Act. The purpose of this provision is to protect an employer's right to freely choose its collective bargaining representatives without coercion or restraint by a union. The ALJ found a violation of Section 8(b)(1)(B) without any record evidence from the Employer that its right to voluntarily select the Charging Party as its collective bargaining representative was anything but that: an entirely voluntary choice. To the contrary, the only agent of the Employer with the authority to invoke this right, categorically denied ever being coerced or restrained by the Union. The ALJ's Decision relies upon a single Board case that analyzes the meaning of "restraint or coercion" in the context of a

§8(b)(1)(B) claim. This case is clearly distinguishable from the facts presented here and reliance upon this authority is a clearly erroneous application of Board law.

## **II. EXCEPTIONS**

Respondent, Council 30, United Catering, Cafeteria and Vending Workers, RWDSU/UFCW (Union) submits the exceptions listed below to the Decision of ALJ Arthur J. Amchan dated April 4, 2013:

1. Exception is taken to the ALJ's finding that the General Counsel met its burden of proving that the Union restrained or coerced Awrey Bakeries, LLC ("Employer") in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances. (Decision p. 5, lines 9-10 & p. 7, lines 8-11)

2. Exception is taken to the ALJ's findings that Union president Joseph Silva conditioned the granting of concessions in bargaining upon the Employer discharging the Charging Party and that, even if true, such conduct amounts to "restraint" or "coercion" within the meaning of Section 8(b)(1)(B) of the Act. (Decision p. 5, lines 38-40 & p. 7, lines 8-11)

3. Exception is taken to the ALJ's finding that the Board's decision in *Local 259, Automobile Workers*, 225 NLRB 421 (1976) supports a finding that the Union violated Section 8(b)(1)(B) where the Union engaged in no restraining or coercive conduct within the meaning of the Act. (Decision p. 5, lines 40-41 & p. 7, lines 3-4)

4. Exception is taken to the ALJ's finding that the Employer's agent Barry Kasoff did not directly contradict the testimony of Jim Pallarito that he overheard Kasoff promising to discharge the Charging Party only after Silva guaranteed him ratification of the MOU. (Decision p. 4, fn. 4)

5. Exception is taken to the ALJ's finding that the Union did not establish that Kasoff would have discharged the Charging Party in the absence of the alleged Union coercion. (Decision, p. 6, lines 28-29)

6. Exception is taken to the ALJ's finding discrediting Kasoff's testimony that he decided to lay off the Charging Party prior to ever meeting with the Union over economic concessions or at any time prior to May 23, 2012. (Decision p. 5, lines 11-12 & p. 4)

7. Exception is taken to the ALJ's finding that the motivation of 150 undisclosed individual union members in voting for or against the ratification of the MOU added credibility to Pallarito's testimony and is evidence of the Union's motives in attempting to remove the Charging Party from her job. (Decision p. 4, fn. 4)

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
CANZANO & RADTKE, P.C.

By: /s/ Patrick J. Rorai  
PATRICK J. RORAI (P65091)  
Attorneys for Respondent Union  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
[prorai@michworklaw.com](mailto:prorai@michworklaw.com)

Dated: May 24, 2013

**PROOF OF SERVICE**

I hereby certify that on March 24, 2013 I e-filed the Respondent Union's Exceptions and served same upon:

Rana Roumayah	rana.roumayah@nlrb.gov
William Evans	wne@evanspletkovic.com
Joshua Gadharf	jgadharf@mcdonaldhopkins.com

via e-mail.

By: /s/ Patrick J. Rorai  
PATRICK J. RORAI (P65091)  
McKNIGHT, McCLOW, CANZANO,  
SMITH AND RADTKE, P.C.  
Attorneys for Respondent Union  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
[prorai@michworklaw.com](mailto:prorai@michworklaw.com)