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June 13, 2013
VIA E-MAIL

Gary Shinnars
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

Re: Cushman & Wakefield, Inc.
Case 04-CA-085979

Dear Mr. Shinnars:

Enclosed please find Counsel for the Acting General Counsel's Answering Brief in the above-captioned matter. Copies of the Brief have this day been served on the persons below by e-mail.

Very truly yours,

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

CUSHMAN & WAKEFILED, INC.

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 313

Case 04-CA-085979

and

UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICE PLUMBERS AND PIPEFITTERS
OF THE UNITED STATES AND CANADA LOCAL 74

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
ANSWERING BRIEF**

Respectfully submitted



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Dated: June 13, 2013

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I. INTRODUCTION AND PROCEDURAL HISTORY

Cushman & Wakefield (Respondent) has a contract to provide maintenance services at two JP Morgan Critical Data Facilities in Wilmington and Newark, Delaware. International Brotherhood of Electrical Workers Local 313 (Local 313 or the Union) has since 2004 represented a single unit encompassing employees at both of these facilities. Although the employees are represented by Local 313 and covered by contracts between Local 313 and Respondent, they are in some instances HVAC mechanics who are members of United Association of Journeymen and Apprentice Plumbers and Pipefitters of the United States and Canada Local 74 (Local 74). To accommodate these Plumbers Local 74 members, Local 313 included in its collective bargaining agreements with Respondent, Union security provisions under which it agreed to treat membership in Local 74 as equivalent to membership in Local 313. When the most recent contract between the parties expired in the fall of 2011, however, Local 313, concerned that it was not recouping the costs of representation from Local 74 members, informed Respondent that it was no longer willing to agree to this arrangement. Respondent insisted that Local 313 continue to agree to view membership in Local 74 as the same as membership in Local 313, and the parties eventually reached impasse on this issue.

Local 313 responded by filing the charge and amended charge in this case on July 24 and September 7, 2012, contending that Respondent had unlawfully bargained to impasse over a non-mandatory subject for bargaining (GCX-1(a)(c)).¹ A Complaint based on Local 313's charges issued on January 16, 2013 (GCX-1(e)). Local 74 moved to intervene, and its Motion was granted over Local 313's objection on February 21, 2013 (GCX-1(h)(j)). A hearing was held

¹ GCX refers to General Counsel's exhibits. IX refers to Intervenor exhibits. Numbers in parentheses refer to pages in the official transcript.

before Administrative Law Judge Robert Giannasi in Philadelphia, Pennsylvania, on March 20, 2013.

Judge Giannasi issued his Decision on May 6, 2013, concluding that the question of what constituted membership in Local 313 was an internal Union matter about which Local 313 was not obliged to bargain. Because Respondent insisted to impasse on negotiating over this non-mandatory subject, Judge Giannasi found that it violated Section 8(a)(5) of the Act. Both Respondent and Local 74 have filed exceptions to Judge Giannasi's Decision. Local 74 argues that it jointly represents unit employees along with Local 313 and that its status as joint representative entitles Respondent to insist on a Union security provision requiring membership in Local 74 as a condition of employment. Respondent does not claim that Local 74 acts as the joint representative for unit workers, but nonetheless maintains that the question of whether membership in Local 74 should be viewed as membership in Local 313 for purposes of Union security is a mandatory subject for bargaining.

II. ISSUES

1) Whether Local 74 serves as the joint representative for employees in the unit of Respondent's employees represented by Local 313?

2) Whether, assuming there is no joint representative, Respondent's Union security proposals are a mandatory subject for bargaining?

III. STATEMENT OF FACTS²

J.P. Morgan operates computer data storage facilities in Newark and Wilmington, Delaware. Since about April 2004, Local 313 has represented a single unit of maintenance employees working at these two facilities. There are currently about 50 employees in the unit (Tr. 22-24).

J.P Morgan subcontracts the maintenance work at the facilities; it does not directly employ unit employees. At the time recognition was initially granted in 2004, EMCOR Facilities Services, Inc. was the subcontractor. EMCOR was subsequently replaced by PM Realty Group LP and then by Respondent. Respondent has employed unit employees since the fall of 2009 (Tr. 24-27).

The original contract between EMCOR and Local 313 ran from April 2004 through November 2008 (Tr. 40; UX-1). Local 313 and PM Realty agreed to a successor contract covering unit employees which was effective from December 1, 2008, through November 30, 2011 (Tr. 25; GCX-2). Respondent agreed to honor the terms of PM Realty's contract when it took over as maintenance contractor in November 2009 (Tr. 25-27; GCX-3).

Maintenance work at the data storage facilities requires some employees capable of performing electrical work and some employees able to handle plumbing, heating and air conditioning systems. To supply the plumbers and HVAC mechanics, Local 313 turned to Plumbers Local 74, and the bargaining unit has historically included some Local 74 members. Currently, about one-third of unit employees are members of Local 74 (Tr. 23-24, 57).

The EMCOR and PM Realty contracts with Local 313 included provisions recognizing the presence of Local 74 members in the bargaining unit. Both contracts, for example, contained

² The facts in this case are almost entirely undisputed, and the recitation which appears below is based on the findings made by the Administrative Law Judge.

an acknowledgement that “in some instances where certain special qualifications are required, the Union shall, through a separate understanding by and between it and Plumbers & Pipefitters Local 74, refer applicants from Local 74 to fill such positions” (IX-1 and GCX-2, Sec. 7(3)). The contractual provisions permitting deduction of Union dues from employee paychecks noted that the amounts deducted for Local 74 members would be determined by Local 74’s By-Laws (IX-1 and GCX-2, Sec. 10). The no-strike clause in the PM Realty contract required employees to cross picket lines established by either Local 313 or Local 74 (GCX-2, Sec. 17). Local 74 members receive health insurance and pension benefits through joint labor-management funds associated with Local 74 with contribution amounts varying from the amounts contributed to Local 313 funds on behalf of Local 313 members (Tr. 48-49). Appendices to the contracts indicated the differing amounts of the contributions required, although the total value of the wage and benefit package was the same for all employees (IX-1 and GCX-2, p. 19).³ Most critically for purposes of this case, both the EMCOR and PM Realty contracts contained Union security provisions requiring membership in Local 313 as a condition of employment, but saying that “membership in good standing in Plumbers & Pipefitters Local 74, which shall also provide employees under this agreement, shall be considered compliance with this [Union security] provision” (IX-1 and GCX-2, Sec. 7(1)).

Despite these references to Local 74, both the EMCOR and PM Realty contracts clearly indicated that Local 313 was recognized as the exclusive representative for unit employees and that all unit employees, regardless of which Union they belonged to, would have their terms of employment established by agreement between Local 313 and the employers (IX-1 and GCX-2, Sec. 1, 7(3)(c)). Further, Local 74 representatives did not participate in the negotiation of the PM Realty agreement and were not involved in handling grievances filed by unit employees.

³ Because the Local 74 funds required higher contributions, Local 74 members received a lower rate of pay.

Only representatives of Local 313 negotiated contracts and resolved grievances involving unit workers (Tr. 38-39).

All Union dues deducted from unit employee paychecks are forwarded to Local 313 even if some of the individuals having dues deducted are members of Local 74. Local 313 initially forwarded the full amount of any dues deducted from Local 74 member checks to Local 74. As the cost of processing grievances for unit employees mounted, it decided to retain some of the Local 74 dues to help defray the expense (Tr. 49-53). Local 74 responded by filing a legal action in United States District Court contending that this dues retention was improper (GCX-1(h), see attachment).⁴

In the fall of 2011, Local 313 and Respondent began negotiations for a new agreement to replace the PM Realty contract Respondent adopted in 2009. The parties met on approximately 10 occasions between the fall of 2011 and July 2012. Only Local 313 representatives participated in bargaining. Representatives of Local 74 were not involved (Tr. 28).

Throughout bargaining, Respondent sought to retain in the Union security clause the provision which required Local 313 to treat membership in Local 74 as satisfying an employee's Union security obligations. It also sought to add a Side Letter to the agreement stating that employees who were members of Local 74 were not required to become members of Local 313. Local 313 resisted both of these provisions (Tr. 29-30).

In a conference call held on July 18, 2012, representatives of the parties reached agreement on all terms of a contract with the exception of the portion of the Union security clause specifying that employees could satisfy their Union security obligation through membership in Local 74 and the language in Respondent's Side Letter stating that members of Local 74 were not obliged to become members of Local 313. Local 313 took the position that

⁴ The suit is still pending (Tr. 13).

these provisions were non-mandatory subjects for bargaining and that Respondent could not insist on them as a condition for reaching agreement. Respondent claimed the provisions were mandatory subjects of negotiations (Tr. 31-34; GCX-5).

To resolve this dispute, the parties agreed that Local 313 would file the charge which ultimately became this case and that they would abide by the results. If the Board concludes that the disputed language concerns a mandatory subject for bargaining, it will be retained in the contract. A contrary conclusion will result in the removal of the offending language. All of this was summarized in a confirming e-mail sent by Respondent attorney Richard Muser to Local 313 representatives on July 19, 2012 (Tr. 32-34; GCX-5). With this understanding, the agreement was subsequently ratified by unit employees and signed by the parties in August and September 2012 (Tr. 36-38; GCX-7, 8).

IV. ARGUMENT

A. Local 74's Joint Recognition Claim

Intervener Local 74 insists that it actually serves as the joint representative for unit employees along with Local 313. Since it is the representative, Local 74 claims Respondent was entitled to seek its inclusion in the contract's Union security clause. In fact, Local 74 argues that it was unlawful for Local 313 to resist Respondent's demand and to seek an agreement which excluded Local 74.

To establish status as the joint representative, Local 74 was obliged to show a "clear and unequivocal agreement" by Respondent to recognize it as such. Express declarations of recognition are not necessarily required, and an employer might grant implicit recognition through its conduct toward the supposed representative. To establish implicit recognition,

however, the employer's conduct must unambiguously demonstrate an intent to enter into negotiations with the alleged representative. Behavior subject to more than one interpretation is not sufficient. *Terracon, Inc.*, 339 NLRB 221, 223-25 (2003), aff'd 361 F.3d 395 (7th Cir. 2004); *Nantucket Fish Co.*, 309 NLRB 794, 795 (1992).

As the Administrative Law Judge properly found, Local 74 failed in this case to produce evidence sufficient to show clear and unequivocal recognition by Respondent of its status as joint representative. Respondent's predecessor, PM Realty, signed a 2008 contract with a provision recognizing Local 313 as the exclusive representative for unit employees. Respondent adopted this contract when it took over as maintenance contractor in 2009. In 2011, Respondent entered into negotiations with Local 313 for a new agreement. During these negotiations, it agreed to a contractual provision memorializing its recognition of Local 313 as exclusive representative, and it has recently signed a collective bargaining agreement reiterating this grant of exclusive recognition. Neither the PM Realty contract nor the agreement recently signed by Respondent makes any reference to recognition of Local 74 as the employees' representative. Further, Local 74 did not participate in the bargaining which led to the contracts, and only representatives of Local 313 have handled grievances filed by unit employees against Respondent. In short, nothing in Respondent's behavior suggests any intent to recognize Local 74 as a joint representative for unit workers, and even Respondent's Brief in Support of its Exceptions to the Board acknowledges Local 313's status as the only representative for unit employees.⁵

⁵ Local 74 insists that its failure to participate in bargaining or grievance handling should not be viewed as fatal to its claim of joint representative, but the cases it cites in support of this argument, *Ozanne Construction Company*, 317 NLRB 396 (1995), and *Pharmaseal Laboratories*, 199 NLRB 324 (1972), are easily distinguishable. The two Unions in *Pharmaseal Laboratories* were jointly certified as the representative for unit employees, while the employer in *Ozanne Construction* formally recognized the joint representative. Further, there was at least some joint bargaining in both cases even if one union did not attend all sessions. In this case, Local 74 has never been certified or formally recognized as the representative for unit employees, and there is no evidence that it has ever participated in bargaining.

Local 74 counters by pointing to provisions in both the PM Realty contract and the agreement recently signed by Respondent which make reference to Local 74. But, these provisions merely represent an acknowledgement that some unit workers were obtained through Local 74, are Local 74 members and secure insurance and other benefits through Local 74 Funds. Further, since the provisions were negotiated by Local 313 without any apparent participation by Local 74, their existence falls well short of unambiguously demonstrating an intent to recognize and negotiate with Local 74.

Local 74 also complains that it produced an individual who worked for EMCOR at the time that entity granted initial recognition in 2004 but was not permitted to question him about what EMCOR's intent was with respect to Local 74. If questioning had been allowed, Local 74 insists its witness would have declared that EMCOR intended joint recognition of Local 74 and claims this testimony would have established Local 74 as the joint representative for unit employees. There are two problems with this argument.

First, the testimony, if it had been permitted, would have run afoul of the parol evidence rule which bars introduction of oral testimony to vary the unambiguous terms of written collective bargaining agreements. *America Piles, Inc.*, 333 NLRB 1118, 1119 (2001); *Teamsters Local 439 (Pittsburgh-Des Moines Steel Company)*, 196 NLRB 971, 975 (1972). The EMCOR collective bargaining agreement clearly states that unit employees authorized Local 313 to serve as their representative and that EMCOR recognized Local 313 as the "exclusive bargaining representative" for unit workers (I-1, Section 1). No mention is made of Local 74, and testimony that EMCOR actually intended joint recognition would contradict the plain language of the contract. It is true, as Local 74 correctly notes, that Local 74 is mentioned in other portions of the EMCOR agreement. But, none of the references say anything about recognition of Local 74

as the employees' representative. And, the existence of some allusions to Local 74 is not sufficient to cancel or render ambiguous the clear contractual language declaring Local 313 to be the exclusive representative.

Second, the question in this case is not whether EMCOR recognized Local 74 as the joint representative for unit employees. The issue is whether Respondent granted such recognition. Even if Local 74's witness could somehow have established that EMCOR granted Local 74 recognition, this would not have demonstrated that Respondent, when it took over from PM Realty years after EMCOR's departure, followed suit. In fact, as I noted above, the evidence shows that Respondent has never granted recognition to Local 74. The Board should, therefore, reject Local 74's attempt to claim status as the joint representative for the unit employees in this case and adopt the Administrative Law Judge's conclusion that Local 313 is the sole representative for unit workers.⁶

B. Respondent's Mandatory Subject for Bargaining Contention

Although Respondent acknowledges Local 313's status as the exclusive representative for unit employees, it contends that this status does not preclude it from insisting that employees be permitted to satisfy their Union security obligations through membership in Local 74. The Administrative Law Judge disagreed, finding that Respondent's Union security proposals were a non-mandatory subject for bargaining about which Respondent could not bargain to impasse. Respondent excepts to this conclusion.

The basic legal framework applicable here is well-settled. The NLRA requires parties to bargain over "wages, hours and other terms and conditions of employment." Topics which can be characterized as "terms of employment" are referred to as mandatory subjects of bargaining.

⁶ Since Respondent granted exclusive recognition to Local 313 when it adopted the PM Realty contract in 2009, any attempt by Local 74 to argue that it was the victim of an unlawful withdrawal of recognition would be time-barred. *Local Lodge No. 1424 v. NLRB*, 362 U.S. 411, 417-18 (1960).

When mandatory subjects are involved, parties can insist on their positions and bargaining to impasse is permitted.

Bargaining over matters which are not “terms of employment,” on the other hand, is permitted but not required. Parties can raise such issues in negotiations but cannot insist to impasse on inclusion of such non-mandatory items in a collective bargaining agreement. According to the Supreme Court, insistence to impasse on non-mandatory issues is “in substance, a refusal to bargain about the subjects that are within the scope of mandatory bargaining.” *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). As a consequence, a party who bargains to impasse over a non-mandatory subject engages in a refusal to bargain which violates Section 8(a)(5). *NLRB v. Wooster Division of Borg-Warner Corp.* supra; *Antelope Valley Press*, 311 NLRB 459, 460 (1993).

Internal union affairs are considered a non-mandatory subject of bargaining. *NLRB v. Wooster Division of Borg-Warner Corp.*, supra. at 350; *Quality House of Graphics, Inc.*, 336 NLRB 497, 508 (2001). The question of whether employees will have a Union security obligation is a mandatory subject of bargaining, but the details of what will be required to satisfy that obligation are generally viewed as internal union matters about which bargaining cannot be compelled. The Board has, for instance, decided that employers cannot force unions to bargain over the amount of dues or initiation fees under the guise of negotiating Union security. *Pleasantview Nursing Home*, 335 NLRB 961, 963 (2001), enf. den. on other grounds 351 F.3d 747 (6th Cir. 2003); *International Union of Bricklayers*, 306 NLRB 229, 235 (1992); *Service Employees Local 535 (North Bay Center)*, 287 NLRB 1223, fn. 1 (1988), enfd. 905 F.2d 476 (D.C. Cir. 1990); *Briarcliff Pavilion*, 260 NLRB 1374, 1377 (1982), enfd. 725 F.2d 669 (3d Cir. 1983). The question here is where Respondent’s Union security proposals fit into this

framework. Was Local 313 obliged to bargain over whether members of Local 74 would be considered members in good standing in Local 313 or was this an internal Union matter about which bargaining could not be compelled?

As the Administrative Law Judge correctly noted, the basic structure of the Act dictates a finding that Respondent's proposals should properly be viewed as an internal Union matter. Union security arrangements are lawful only because of the proviso to Section 8(a)(3). Under the proviso, an employer is permitted to make "an agreement with a labor organization...to require as a condition of employment membership therein..." provided the labor organization is the exclusive representative for employees in the "appropriate collective bargaining unit covered" by the agreement. Employees can be terminated for failure to comply with such agreements requiring union membership, however, only if they fail to "tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining" membership in the contracting union. Thus, as the language of the proviso makes plain, what is clearly contemplated is that parties can agree to require employees to pay dues and fees to the union which serves as their exclusive representative and is party to a contract with their employer.

Local 313 is the exclusive representative in this case and party to a contract with Respondent. Local 74 is neither the exclusive representation nor party to the collective bargaining agreement covering unit employees. A contractual provision requiring payment of dues and fees to Local 313 is, therefore, consistent with the intent of the proviso. A provision requiring payments to Local 74 is not, and Respondent's attempt to force Local 313 to agree to such a provision is at odds with the basic statutory structure.

In fact, applying the proviso strictly, Respondent's Union security proposal is arguably unlawful. The proposal requires membership in Local 313 as a condition of employment but

specifies that membership in Local 74 will satisfy this requirement. This means employees must be members in either Local 74 or Local 313. An employee who opts for membership in Local 74 would presumably have an obligation to pay the dues and fees required by that organization. Failure to do so could result in termination of the individual's employment for non-compliance with Union security requirements. But, Local 74 is neither the contracting Union nor the exclusive representative for unit employees. If the proviso is strictly applied, Respondent cannot enter into an agreement which allows termination of employees for failure to make payments to a labor organization which is neither the contracting Union nor the exclusive representative of covered workers. In other words, it cannot enter into an agreement which allows for termination of employees who fail to make payments to Local 74. Thus, the contractual provision upon which Respondent is insisting could easily be viewed as illegal.

Respondent's proposal might be saved, however, if it is treated as merely specifying what constitutes membership in good standing in Local 313. Under this interpretation, Respondent and Local 313 are not requiring payments to Local 74. They are agreeing that Local 313 will treat individuals who make payments to Local 74 as though they are members in good standing in Local 313. Viewed in this way, the proposal could be permissible since the membership obligation runs to Local 313 which is both the contracting Union and the employees' exclusive representative. But, if the proposal is viewed in this manner, it clearly involves an attempt by Respondent to dictate requirements for membership in Local 313, and Local 313's membership requirements are certainly an internal Union issue about which bargaining should not be required.

This result would be consistent with the proviso to Section 8(b)(1)(A). The Section 8(b)(1)(A) proviso allows unions to prescribe their "own rules with respect to the acquisition or

retention of membership” and makes clear Congress’ determination to avoid having the NLRA interfere with union membership requirements. *Price v. NLRB*, 373 F.2d 443, 446 (9th Cir. 1967), cert. den. 392 U.S. 904 (1968). It is appropriate to consider this Congressional determination in setting the limits of the obligation to bargain. *North Bay Development Disabilities Services, Inc v. NLRB*, 905 F.2d 476, 478 (D.C. Cir. 1990), cert. den. 498 U.S. 1082 (1991). And, a finding that Respondent cannot force bargaining over Local 313 membership requirements would clearly be in keeping with the Congressional desire to avoid having the NLRA restrict union independence in the establishment of rules regarding membership.

A finding that Local 313 was not obliged to bargain over Respondent’s proposal would also be consistent with the rationale for allowing Union security. Union security is designed to address the problem of free riders – employees who secure the benefits of union representation without being willing to help defray the costs of providing that representation. See, *Communications Workers of America v. Beck*, 487 U.S. 735, 747-49 (1988). Local 313 is the entity absorbing the costs of representation in this case. Allowing employees to satisfy their Union security obligations through membership in Local 74 deprives Local 313 of some of the money it could use to pay those costs. Local 313 may want to allow Local 74 to have some of the funds obtained through Union security, but this should be Local 313’s decision. Respondent’s proposal would take the issue out of Local 313’s hands and inject Respondent into what should be an internal Union determination regarding the allocation of Union resources. As the District of Columbia Circuit noted in confronting a similar issue in *North Bay Development Disabilities Services, Inc. v. NLRB*, supra. at 479, the practical effect of forcing bargaining over

such a proposal “could well be to require a union to negotiate with an employer the amount it will devote to representation of employees...which is surely an internal union matter.”⁷

Finally, requiring bargaining over Respondent’s Union security proposal would undermine Local 313’s status as the exclusive representative for unit employees. The Board has recognized that an exclusive representative has an interest in encouraging unit solidarity. Unions may, for instance, prohibit dual unionism or expel members who seek to have the union displaced with another labor organization. See, *Sheet Metal Workers Local 22 (Miller Sheet Metal)*, 296 NLRB 1146, 1147-48 (1989); *Los Angeles District Council of Carpenters (Hughes Helicopters)*, 224 NLRB 350, 353 (1976). By allowing some unit employees to satisfy their Union security obligations through membership in Local 74, Respondent’s proposal has the potential to undermine unit solidarity and create an alternative organization to which a portion of the unit may look for guidance. The existence of such an alternative organization is inconsistent with the notion that Local 313 is the exclusive representative for all unit employees. Further, the proposal potentially creates in Respondent’s workforce a core of support for a competitor which may at some point seek to supplant Local 313 as the employees’ representative. Requiring bargaining over such an arrangement is arguably forcing Local 313 to negotiate its own destruction.

In short, there are a number of reasons to agree with the Administrative Law Judge’s conclusion that Respondent’s Union security proposals are a non-mandatory subject for bargaining. In arguing for an opposite conclusion, Respondent likens to its proposals to partial Union security provisions such as maintenance of membership which have been traditionally viewed as mandatory subjects for bargaining. A maintenance of membership provision allows

⁷ The question in *North Bay* was whether bargaining was required over the amount of the agency fee charged by a Union. The Circuit Court agreed with the Board’s determination that the fee amount was an internal Union issue about which the Union was not obliged to bargain.

employees who never join an opportunity to avoid any Union security obligation. According to Respondent, its proposal offers a similar exemption to individuals who elect to join Local 74.

This argument mischaracterizes the effect of Respondent's proposal. In a maintenance of membership regime, employees can completely avoid any obligation to make financial contributions to a union. Since parties have an obligation to bargain over whether contributions will be required, it makes sense to view provisions which allow some employees to completely avoid payments as mandatory subjects for bargaining. But, Respondent's proposal does not allow employees to completely avoid dues payments. It requires all employees to make payments, but allows some employees to make their payments to a labor organization which is not their exclusive representative. Since the Section 8(a)(3) proviso clearly contemplates that any payments made under Union security arrangements will be to the exclusive representative, the provisions proposed by Respondent, unlike partial Union security, are fundamentally inconsistent with the statutory structure and properly branded as non-mandatory.

Respondent also argues that it has an interest in allowing employees to satisfy Union security obligations through membership in Local 74 since it needs access to the skilled HVAC mechanics Local 74 can provide. But, nothing prevents Respondent from hiring skilled mechanics so long as they eventually make dues payments to Local 313, and Respondent is free to refuse to agree to any Union security if it feels requiring payments to Local 313 inhibits its ability to hire qualified employees. In any case, the mere fact that Respondent may have an economic interest in how Local 313 conducts its internal affairs does not give Respondent license to compel bargaining over those affairs. *Pleasantview Nursing Home*, supra at 963-46.

In sum, the Administrative Law Judge was clearly correct in deciding that Respondent's Union security proposals are a non-mandatory subject for bargaining. Since neither Respondent

nor Local 74 contests the Judge's finding that Respondent bargained to impasse over those proposals, the Board should adopt the Judge's conclusion that Respondent violated Section 8(a)(5) of the Act.

V. REMEDY

To remedy its unfair labor practices, the Judge properly ordered Respondent to cease and desist from bargaining to impasse over non-mandatory subjects of bargaining, including the portion of Section 7(1) of its proposed collective bargaining agreement which permits employees to comply with their Union security obligations through membership in Plumbers and Pipefitters Local 74 and the portion of its proposed Side Letter to the agreement which provides that employees who are members of Plumbers and Pipefitters Local 74 are not required to become members of International Brotherhood of Electrical Workers Local 313. He also correctly required Respondent to post an appropriate Notice to Employees.

Respectfully submitted



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Dated: June 13, 2013