

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

<b>In the Matter of</b>	:	
	:	
<b>MIKE-SELL'S POTATO CHIP CO.</b>	:	<b>CASE NO. 9-CA-094143</b>
	:	
<b>and</b>	:	
	:	
<b>GENERAL TRUCK DRIVERS,</b>	:	
<b>WAREHOUSEMEN, HELPERS, SALES</b>	:	
<b>AND SERVICE, AND CASINO</b>	:	
<b>EMPLOYEES, TEAMSTERS LOCAL</b>	:	
<b>UNION NO. 957</b>	:	
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**EXCEPTIONS OF RESPONDENT MIKE-SELL'S POTATO CHIP COMPANY TO THE  
NATIONAL LABOR RELATIONS BOARD OF THE DECISION OF  
ADMINISTRATIVE LAW JUDGE GEOFFREY CARTER**

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Potato Chip Company**

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Respondent Mike-sell’s Potato Chip Company<sup>1</sup> (“Mike-sell’s” or “Company”), pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, hereby files its exceptions to the Decision and Order of Administrative Law Judge Geoffrey Carter (“ALJ”), which issued in the above-captioned case on June 18, 2013 (JD-40-13) (“Decision”). The specific grounds for these exception are detailed in the contemporaneously-filed Brief in Support of Exceptions to the Decision of Administrative Law Judge Geoffrey Carter. Mike-sell’s excepts to the ALJ’s Decision as follows:

1. Decision p. 17, lines 21 and 30-34.

The ALJ’s factual findings that “[o]n November 14 . . . the parties made significant moves to advance negotiations;” that “while the parties did not reach a final agreement on November 14, they made significant progress that included concessions from both sides;” and

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<sup>1</sup> Mike-sell’s Potato Chip Company recently changed its name to Mike-sell’s Snack Food Company.

that “[i]nstead of continuing to negotiate . . . Respondent (on November 16) converted its existing proposals into ‘full and final’ offers because it did not wish to continue operating under the expiring collective bargaining agreements,” as well as the bases for those findings.

2. Decision p. 17, lines 36-44.

The ALJ’s factual findings and legal conclusions that “the parties were not at impasse when Respondent implemented the terms of its full and final offers on November 19;” that “[t]he evidentiary record establishes that each party participated in negotiations in good faith before Respondent declared impasse, as they met for bargaining sessions on twelve occasions (combining all groups) in a two-month time period, and hammered out several tentative agreements through their efforts;” and that “Respondent set the November 17 expiration date as an artificial deadline for working out a new agreement, and subsequently declared impasse without regard to the significant concessions that each party made only a few days earlier (November 14),” as well as the bases for those findings and conclusions.

3. Decision p. 17, lines 46-47 to Decision p. 18, lines 1-24.

The ALJ’s factual findings and legal conclusions that “Respondent’s decisions to declare impasse and unilaterally implement its full and final offers under the circumstances described above ran afoul of the Act for multiple reasons;” that “Respondent repeatedly declared its intention to move on from the expiring contracts, but acted on that desire well before the parties reached the ends of their respective negotiating ropes;” that “when the Union agreed on November 14 to calculate route sales driver commissions based on net sales (as Respondent proposed, albeit with different commission rates), the Union opened the door to possible compromises on other issues;” and that “[i]nstead of seizing the opportunity for further negotiation towards a potential agreement, Respondent declared impasse only 4 days later,” as

well as the applicability of the caselaw cited in support of those factual findings and legal conclusions.

4. Decision p. 18, lines 28-30 and 37-43.

The ALJ's factual findings and legal conclusions that "Respondent's defense [that the Union engaged in dilatory tactics] falls short . . . because it is not supported by the evidentiary record;" that "both parties were responsible for the fact that bargaining sessions did not begin until September;" that "[the ALJ does] not find that the Union engaged in dilatory tactics that would warrant or support declaring impasse;" that "the Union remained available to meet for additional sessions when Respondent abruptly converted its proposals into full and final offers, and subsequently declared impasse two days later when those offers were not accepted," as well as the bases for those findings and conclusions.

5. Decision p. 18, lines 45-46 to Decision p. 19, lines 3-16 (including footnote 25).

The ALJ's factual findings and legal conclusions that "none of the relevant factors show that the parties reached an impasse in their negotiations;" that "on November 14, both parties were willing to schedule additional meetings to continue working towards an agreement;" that "[i]t was Respondent who brought the process to a halt when it decided to use the November 17 expiration date of the driver's [sic] unit collective-bargaining agreement as the arbitrary deadline for negotiations;" that "[s]ince the evidentiary record demonstrates that neither party was at the end of its negotiating rope when Respondent declared impasse on November 18, or when Respondent unilaterally implemented the terms of its full and final offers on November 19 . . . Respondent did not carry its burden of showing that the parties reached a good faith bargaining impasse before it took unilateral action;" and that "since Respondent did not fulfill its duty to bargain with the Union to a good-faith impasse before it unilaterally implemented the terms of its

full and final offers on November 19, . . . Respondent violated Section 8(a)(5) and (1) of the Act as alleged in the complaint,” as well as the bases for those findings and conclusions.

6. Decision p. 19, lines 20-26.

The entirety of the ALJ’s “Conclusions of Law,” as well as the bases for those conclusions.

7. Decision p. 19, lines 30-32 to Decision p. 21, lines 1-2 (including footnote 26).

The entirety of the ALJ’s “Remedy,” as well as the bases for that proposed remedy.

8. Decision p. 21, lines 6-41 to Decision p. 22, lines 1-18 (including footnote 28).

The entirety of the ALJ’s “Order,” as well as the bases for that proposed order.

9. Decision, at Appendix.

The entirety of ALJ’s proposed Notice to Employees, as well as the bases for that proposed notice.

10. Decision p. 14, lines 10-34 (including footnotes 22-23) to Decision p. 15, lines 1-2 (including footnote 24), and Decision p. 19 at footnote 25.

The ALJ’s evidentiary ruling to admit evidence and testimony about post-implementation bargaining sessions.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2013, Respondent Mike-sell's Snack Food Company's Exceptions to the Decision of Administrative Law Judge Geoffrey Carter was electronically filed through the National Labor Relations Board website (www.nlr.gov), with copies sent to the following in the manner described below:

By Federal Express, overnight delivery, eight (8) copies to:

Gary Shinnors, Executive Secretary  
National Labor Relations Board  
1099 14th Street, NW, Room 5400 East  
Washington, DC 20570

By Federal Express, overnight delivery, one (1) copy each to:

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