BEFORE THE
NATIONAL LABOR RELATIONS BOARD

TAFT COAL SALES & ASSOCIATES, INC.

and

WALTER ENERGY, INC., **Cases 10-CA-088599**
10-CA-093022

and

WALTER MINERALS, INC.,
Employers,

and

UNITED MINE WORKERS OF AMERICA,
DISTRICT 20.

BRIEF IN SUPPORT OF RESPONDENTS' EXCEPTIONS TO ALJ DECISION

Stephen E. Brown
Attorney for Respondents, Taft Coal Sales &
Associates, Inc (a Separate Employer),
Walter Energy, Inc. (a Separate Employer)
and Walter Minerals, Inc. (a Separate Employer)

Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203-2618
205-254-1023
sbrown@maynardcooper.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

TAFT COAL SALES & ASSOCIATES, INC.

and

WALTER ENERGY, INC., **Cases 10-CA-088599**
10-CA-093022

and

WALTER MINERALS, INC.,
Employers,

and

UNITED MINE WORKERS OF AMERICA,
DISTRICT 20.

BRIEF IN SUPPORT OF RESPONDENTS' EXCEPTIONS TO ALJ DECISION

I. Introduction

Following two separate unfair labor practice charges, the NLRB issued a complaint against Respondents alleging that (1) the three separate Respondents/Employers constituted a "single employer", (2) that one or more of the Respondents had violated Section 8(a)(5) of the Act by failing and/or refusing to bargain regarding the June 27, 2012 layoff at Taft's Choctaw Mine and (3) that Taft had violated Section 8(a)(1) of the Act when Taft's supervisor Nick Hill allegedly threatened closure of the mine in March of 2012 and allegedly asked an employee if he voted for the Union on June 25, 2012.

Each Respondent filed its separate answer in which it denied the material allegations of the Complaint, including the alleged violations and the allegation of single employer status among the three separate and distinct Respondents.

A hearing was held on April 23, 2013 before the Honorable Robert A. Ringler, Administrative Law Judge. On June 13, 2013, ALJ Robert Ringler issued his decision in this case finding that (1) Respondents constituted a "single employer", (2) Respondents had violated Section 8(a)(5) by failing to provide the Union with notice and an opportunity to bargain regarding the June 27 layoff at Taft's Choctaw mine and (3) Nick Hill, a Taft supervisor, had violated Section 8(a)(1) by threatening closure of the mine if the Union came in and by interrogating an employee regarding his Union support. The ALJ also rejected the Section 8(a)(5) remedy requested and proposed by General Counsel and the Union and, instead, ordered a far more severe (and inappropriate) reinstatement and back pay remedy.

On July 25, 2013, Respondents filed their Exceptions to the ALJ's Decision. This brief is filed in support of those Exceptions.

II. Background

Taft Coal Sales & Associates ("Taft") operates two surface coal mines in Alabama – Choctaw and Reid School.[1] Taft is a subsidiary of Walter Minerals, Inc.[2] ("Walter Minerals"), which is also the parent of a separate surface mining subsidiary, Tuscaloosa Resources, Inc. ("TRI"). Walter Minerals is one of several subsidiaries of Walter Energy, a publicly traded, NYSE corporation. Other subsidiaries of Walter Energy include Jim Walter Resources, Inc. (a large underground coal mining company which employs thousands of employees and whose bargaining unit employees are represented by the Union) ("JWR"), Walter Coke, Western Energy, Blue Creek Coal Sales, etc. (232: 233-236; RX15; JX1).[3]

---

[1] The Reid School mine has closed and Taft and the UMWA negotiated a closure agreement for that location.

[2] Taft was acquired by Walter Minerals in 2008. Prior to that time, Taft was owned and operated by Mr. A. J. Taft. (181)

[3] All numerical cites are to the page number(s) in the ALJ hearing transcript and all exhibit cites are either JX (Joint Ex.) or RX (Respondent Ex.). ALJD cites are to the ALJ Decision in this case.

In late 2011, the UMWA and JWR entered into a new Collective Bargaining Agreement. (RX13(a)). For the first time, that Agreement extended the Neutrality and Card Check provisions to other Walter Energy subsidiaries, including Taft and TRI. (RX13(a);198).[4] Because JWR could not bind its sister companies (such as Taft and TRI) to the Neutrality and Card Check provisions of the JWR contract, Walter Energy was a necessary party to that contract also (*i.e.*, as the overall parent corporation, Walter Energy could bind any or all of its subsidiaries to the Neutrality and Card Check provision of the contract).

On April 18, 2012, the UMWA notified Walter Energy that it had achieved majority status among Taft's Choctaw Mine employees and requested that the applicable JWR-UMWA Card Check procedure be activated. Thereafter, the Union cards were submitted to a Neutral and on May 24, 2012, the Neutral confirmed that the Union did have a card majority. On May 29, 2012, the Union again wrote Walter Energy (not Taft) requesting negotiations with Taft over a first collective bargaining agreement.[5] On June 15, 2012, the Company agreed to commence contract negotiations and invited the Union to provide available dates. See JX2.

[4] Neither Walter Minerals nor Taft was involved in these labor negotiations. (198). Rather, Walter Minerals and Taft first learned that the Card Check and Neutrality provisions had been extended to them when they were informed of such by JWR and Walter Energy following negotiations. (198). It is undisputed that, once the Neutrality provision was in place, Taft management, including Vice President of Operations Jan Kizziah, met with employees and informed them that Taft was entirely neutral on the issue of whether or not the employees wanted to unionize and that it was up to the employees to decide that issue for themselves. (37-39; 198-199). Supervisors were also trained as to what they could and could not say during any card signing effort and were specifically instructed not to threaten or interrogate employees in any fashion. (199).

[5] It is critical to note that throughout both the recognition process and the bargaining process at Taft, the UMWA continually communicated directly with Walter Energy and not Taft. The ALJ erroneously pointed to these dealings and communications as evidence of common control of labor relations in his single employer analysis without acknowledging that the Union and not Walter Energy had initiated these communications and that while Walter Energy may have provided information or facilitated regarding various Taft labor relations matters, it did not actually insert itself into these labor relations matters (*e.g.*, the June 27 layoff decision) or Taft's day to day labor relations matters.

III. The June 27 Layoff And The Refusal To Bargain Charge

Despite the fact that the ALJ ignored or mischaracterized much of the key evidence, the facts regarding the June 27 layoff at Taft's Choctaw Mine and the events surrounding that layoff are in large part undisputed.

One of Taft Choctaw's primary customers was Alabama Power Company, which had several large coal production contracts with Taft Choctaw. In 2012, however, because of factors beyond either party's control (*e.g.*, low natural gas prices), Alabama Power had more coal inventoried and more coal contract commitments than it needed (139-140). Likewise, Taft Choctaw was mining more coal than it could sell and was losing money on much of the coal it was selling to Alabama Power (140). As a result, on June 21, 2012, Alabama Power and Taft agreed to reduce production under the Taft-Alabama Power contract by 125,000 tons, starting July 1, 2012. (140, 207, JX2(h)).

Approximately one to two weeks earlier, Steve Dickerson, Taft's Human Resources Director, and David Peters, Mine Superintendent for Taft's Choctaw Mine, learned of this possibility of a significant reduction in production at the Choctaw Mine and the possible need for a corresponding reduction in force. (JX1; 204). Over the next several days and in order to be prepared for a possible RIF, Taft engineers calculated the staffing that would be required, (or, put another way, the reduction that would be appropriate) in light of this reduced coal production going forward. (204-205). Once that information was available, Mr. Dickerson and Mr. Peters began reviewing individual employees' seniority, skills, attendance and safety records to determine which employees would be retained and which would be laid off. (206).[6] As it turned

[6] As Mr. Dickerson and Mr. Lynch explained at the hearing, the RIF selection process took into account four key factors – skills and qualifications, seniority, attendance and safety record. (196). In the end, however, 17 of the 21 employees laid off on June 27 would have likewise been laid off under the Union's "seniority only" approach – *i.e.*,

out, the final selections were not finalized until June 27, the day of the layoff and that layoff list was provided to the Union that same day. (70).[7]

Once Taft and Alabama Power agreed to the 125,000 ton reduction on June 21, Mr. Dickerson and Mr. Peters continued to put into place a reduction in force plan, but now with the clear understanding that the decrease in production (and the corresponding need for a reduction in force) would become effective July 1, 2012. Since Mr. Lynch had been previously communicating with the Union and Mr. Dewberry regarding the Union recognition demand, the card check procedure and the Neutrality Agreement, it was decided that Mr. Lynch would communicate notice of the layoff to Mr. Dewberry. Mr. Lynch was on vacation and entirely unavailable on June 21 when Alabama Power and Taft agreed to the production decrease. (141-142). However, as soon as he returned to work two business days later (Monday, June 25), Mr. Lynch began immediately putting together a notice to the Union and circulating that draft notice for review and approval that same day. (141-142, 208). The notice was finalized on June 25 and was emailed and mailed to Mr. Dewberry that same day. (139, JX2(i)).

In that letter (JX2(i)), Mr. Lynch notified the Union of the anticipated layoff on June 27 and of the reasons for that layoff and invited Mr. Dewberry to contact him "if he had any questions or would like to discuss these actions in greater detail" (68). Instead of calling Mr. Lynch, however, Mr. Dewberry called Mr. Dickerson the following day (June 26) (68-69). In that conversation, Mr. Dickerson generally confirmed the information in Mr. Lynch's June 25 letter – *i.e.*, that the layoff was planned for June 27, that 21 employees would be laid off, that the

---

only four of the 21 employee selections were different under Taft's selection process as compared to the UMWA's preferred selection process.

[7] Contrary to the ALJ's finding that Mr. Lynch (VP of Human Resources for Walter Energy) "scrutinized" this layoff list before its release, the undisputed evidence is that Lynch first reviewed the list immediately before the July 9 meeting with Dewberry (*i.e.*, some 12 days after the layoff) and he had no involvement or input whatsoever in the layoff selection process (ALJD 9:25; TR 154)

layoff was the result of the Alabama Power contract reduction, etc. (69). According to Mr. Dewberry and as confirmed by Mr. Dickerson, Mr. Dewberry then asked Mr. Dickerson if he could provide a list of employees who were being laid off. (69, 71). Mr. Dickerson explained that that list was not finalized but that he would get the final list to him once it was finalized the following day. (70).[8] At that point, Mr. Dewberry indicated that, once he received and reviewed the list, he wanted to discuss this with the Company **("once I get the list, we need to talk about this" (72); "Steve, send me the list and then we are going to need to talk about this once I see it". (72)).** Mr. Dickerson's recollection and understanding of Mr. Dewberry's request was exactly the same as that of Mr. Dewberry – *i.e.*, that once Mr. Dewberry received the list the following day and had the opportunity to review that list, he wanted the opportunity to discuss it. (215, 223, 224). And Taft did precisely as Mr. Dewberry requested – *i.e.*, Mr. Dickerson provided Mr. Dewberry the layoff list and they subsequently met and discussed both the list and the selection process on July 9 in response to Mr. Dewberry's request for a follow up meeting. (224).

In that June 26 telephone conversation and other than Mr. Dewberry's indication that he wanted to discuss the layoff and the layoff selections after he received the list and had an opportunity to review it, there was no other request or indication of any desire to meet, discuss or negotiate regarding the layoff or the layoff selections. (215). Likewise, Mr. Dewberry did not indicate any desire to obtain further information or look at other documentation other than to review the layoff list and then have follow up discussions as needed. (211). Further, Mr.

[8] The ALJ's finding that Dickerson refused to provide the Union with the layoff list until the affected employees were advised and that, as such, this was a *fait accompli* is simply another evidentiary fabrication by the ALJ (ALJD 10:37-40). Both Dewberry and Dickerson testified that Dickerson told Dewberry he would provide the list once it was finalized and that Dickerson did just that. (70, 72, 215, 223-224).

Dewberry did not suggest or request any delay in the layoff[9] or to negotiate regarding the layoff decision or the layoff selection process. (210-211). Again, Mr. Dewberry's only request was that he be provided a copy of the layoff list once it was finalized and to discuss the layoff as need be after he had had an opportunity to review the layoff list and Taft complied fully with that request.

On June 27, Mr. Dickerson provided Mr. Dewberry with the layoff list. (72-73). Since Mr. Dewberry was not familiar with most of the names on the list, he passed the list on to his primary organizer who reviewed the list and expressed some concern that Union supporters had been targeted in the layoff (a claim that was later thoroughly investigated and rejected by the Board). (72-74, 195). In any event, Mr. Dewberry then again contacted Mr. Scheller (CEO of Walter Energy), as opposed to Taft, raising these same concerns. (149-150; 158). Mr. Scheller contacted Mr. Lynch and asked him to follow up with Mr. Dewberry regarding these and other concerns raised by Mr. Dewberry. (150). Mr. Lynch contacted Mr. Dewberry on July 5 and corresponded with Mr. Dewberry on July 5 and 6. (150-151; JX2k; RX6). In those communications, Mr. Lynch touched on the selection process, explained that the layoffs were in no way related to Union support or affiliation and, as requested by Dewberry, set up a meeting on July 9 so that the Union and the Company might discuss these matters in greater detail. (150-152).

[9] It is undisputed that Taft was prepared to delay the layoff a few days if the Union requested the same and to bargain over either the decision to lay off or the effects of the layoff. (228). As explained by Mr. Lynch and Mr. Dickerson, once Alabama Power and Taft agreed to reduce the production under the Alabama Power-Taft coal contract, there was only a short period of time to implement any layoff (*i.e.*, the reduction was to become effective July 1, 2012). (JX2(h)). Moreover, the Company did not want to delay the layoff to the following week because that was after the reduction was to go into place and was the week of July 4 when a number of employees were scheduled to be on vacation. As such, Taft decided to identify June 27 as the layoff date so that the layoff could be delayed until June 28 or June 29 if the Union requested such a delay or immediate bargaining. The Union, however, did not request that the layoff be delayed nor did the Union request decisional or effects bargaining. Thus, the layoff went forward on June 27. Interestingly, the ALJ makes the point that Dickerson never offered to delay the layoff (ALJD 6:34-35). Such an absurd observation (when the Union never raised the issue of a possible delay) simply underscores the ALJ's mindset in this case.

As requested, Mr. Lynch (Walter Energy) and Mr. Dickerson (Taft) met with Mr. Dewberry and another Union representative on July 9 to discuss the layoffs and the layoff selection process in greater detail. (79, 195-196). In that meeting, Mr. Dickerson and Mr. Lynch explained the factors considered in the layoff selection process. (79, 195-196). Moreover, the parties engaged in some "bargaining" regarding the June 27 layoffs. More specifically, at some point, the Union stated its position as to how it preferred the layoff selection be made and the Company explained its position as to how the layoffs were selected and why. (155-156). Although there was very little difference in those selection approaches (*i.e.*, only four of the twenty-one layoff selections would have been different), each side remained firm in their respective positions. (80-81; 156). The Union also proposed panel rights at JWR's underground mines for those laid off from Choctaw but Walter Energy did not agree to that proposal. (81). As Mr. Dewberry explained, this was not a hostile meeting but, instead, was a very cordial, very professional meeting. (80). The July 9 meeting closed with Mr. Dewberry indicating to Mr. Lynch and Mr. Dickerson that he would consult with other UMWA officials to determine whether further action might be taken. (159).[10]

Very shortly after the June 27 layoff at Choctaw, approximately 12 of the 21 employees laid off from Choctaw were offered and/or accepted employment either at Taft's Reid School Mine or at Taft's sister surface mining company, Tuscaloosa Resources, Inc. (RX12). Also, Taft has continued negotiating with the Union over the June 27 layoff and a new collective bargaining

[10] Of course, rather than pursue additional bargaining at that time, the Union decided to file a charge alleging that the June 27 layoff at Taft Choctaw had retaliated against and targeted Union supporters. After an extended and thorough investigation, the NLRB determined that the layoff selections were based on legitimate, non-discriminatory factors and that employees were not selected for layoff based on their Union support or affiliation. Simultaneously and rather than seek further bargaining, the Union also promptly filed a grievance claiming that the June 27 layoff was governed by the JWR Labor Agreement, a claim completely contrary to any failure to bargain claim.

agreement (and also over the closure of the Reid School mine). (192-193). The parties have had numerous negotiating sessions and those negotiations are ongoing.

IV. Respondents Did Not Refuse To Bargain and There Was No 8(a)(5) Violation

In finding a failure to bargain violation, the ALJ correctly noted that the Union was notified of the Taft Choctaw layoff on June 25. The ALJ then noted (erroneously) that when Dewberry asked Dickerson for a copy of the layoff list, Dickerson declined stating that he would not provide the list until after the affected employees were laid off (ALJD 10:36-39).[11] The ALJ also found (erroneously) that the Company implemented the layoff "without offering the Union any opportunity to bargain over these matters" (ALJD 10:42-43).[12] As explained below, the ALJ reached these conclusions by glossing over and/or mischaracterizing the evidence and by ignoring very important and relevant evidence.

Based on what are essentially undisputed facts and contrary to the ALJ's finding, it is clear that neither Taft nor Walter Minerals nor Walter Energy failed or refused to bargain with the Union. First, it is undisputed that the Union was given advance notice of the June 27 layoff and given that notice as soon as was practical and possible under the circumstances. (JX2(h), 2(i); 139, 141-142).[13] Moreover, in that notice, the Union was invited to discuss and/or negotiate

---

[11] Of course, this characterization of the evidence is simply untrue. Contrary to the ALJ's characterization, the undisputed evidence shows that Dewberry asked for a copy of the layoff list and Dickerson told him that it was not finalized but that he would provide him a copy when it was and Dewberry was agreeable to that (70, 72, 215, 223-24).

[12] Again, the ALJ's factual finding is simply wrong. In this regard, it is undisputed that, in the June 25 letter notifying the Union of the layoff, Lynch invited the Union to contact them if the Union "had any questions or would like to discuss these actions in greater detail" (JX2(i); 68). Further, the Board has noted that a Union can not simply assume that an employer is refusing or will refuse to bargain. Instead, absent clear and objective evidence of futility, a Union must request bargaining over the decision. See McGraw Hill Broadcasting Co., 355 NLRB No. 213 (2010).

[13] Here, the Union was given two days notice of the layoff and the Company invited the Union to discuss and/or negotiate. (JX2(i)). Further, it is undisputed that Taft was prepared to negotiate with the Union or to delay the layoff if the Union requested such a delay. (228). Under those circumstances, it can hardly be argued that the Union was not given adequate notice and an opportunity to bargain. See Gulf States Manufacturing, Inc. v. NLRB, 704 F.2d

regarding the layoff and/or the effects of the layoff. (See JX2(i)). The Union, however, only requested that the Company provide a list of the employees to be laid off once that list was finalized and be available to discuss the layoff once the Union had had the opportunity to review that list. (72, 215, 223, 224). The Company was prepared to negotiate with the Union or to delay the layoff if the Union so requested but that did not occur. (148-149; 228). Instead, however, the Company did exactly as the Union asked – *i.e.*, the Company provided the list of employees being laid off and then met with the Union thereafter to discuss the layoff, the reasons for the layoff, the selection procedure, etc. In that July 9 meeting, Taft and the Union in fact exchanged positions and proposals but no agreement was reached. Since that July 9 meeting, Taft and the Union have continued to negotiate both as to a new labor agreement and as to the June 27 layoff. One can hardly imagine a set of facts further removed from a refusal to bargain scenario. Here, contrary to the ALJ's findings, there simply was not an 8(a)(5) violation – in fact, nothing even close to such a violation.

In addition to the fact that the Company did exactly as the Union requested and certainly did not fail or refuse to bargain regarding the June 27 layoff and/or the effects of that layoff, the ALJ erred by ignoring the fact that the Union and the Board should be estopped from arguing that there was any obligation to bargain. More specifically, and as explained at the hearing, immediately after the July 9 meeting in which the Company complied with the Union's request to meet and discuss the layoff, the Union filed a grievance claiming that the June 27 layoff at Taft violated the layoff provisions of the JWR 2011 Coal Wage Agreement. (87; RX1; RX13(a)).

1390(5th Cir. 1983) (company could have given two days notice of layoff rather than delaying notice until only minutes before the layoff). Likewise, the Board has found that as little as two days constitute sufficient notice and an opportunity to bargain and does not preclude the due diligence obligation on the part of the bargaining representative to demand bargaining. Jim Walter Resources, 289 NLRB 1441 (1988). In fact, the Board has held that the fact that the Union was informed of layoffs at the same time as the employees being laid off does not prove futility or excuse a Union from requesting bargaining. See McGraw Hill Broadcasting Co., 355 NLRB No. 213 (2010).

In that grievance, rather than claim that there was no applicable collective bargaining agreement and that the Company was therefore obligated to negotiate over the layoffs, the Union took the contrary position that there was an applicable bargaining agreement (the JWR 2011 Coal Wage Agreement) which contained layoff provisions that directly governed the layoff at Taft. (87). In fact, Mr. Dewberry admitted that both in that grievance and in every other forum, the Union has repeatedly taken the position that it already has a contract applicable to Taft (*i.e.*, the 2011 Coal Wage Agreement with JWR). (88). Even today the Union continues to take that position and to pursue this grievance. Again, if there is already in place a labor agreement governing the June 27 layoff procedure (as the Union has repeatedly and continually contended), then, as a matter of law, there can be no failure to bargain over that same layoff. Rather the remedy, if any, for a violation is through the grievance procedure.

For a variety of reasons, neither the Union nor General Counsel should be allowed to pursue such entirely inconsistent positions, an issue which the ALJ erroneously ignored. The Union should be estopped from even claiming any bargaining obligation so long as the Union continues to insist that there was already a labor agreement in place specifically governing these layoffs. Likewise, General Counsel should be estopped for additional reasons. First, by ignoring that evidence and pursuing a claim inconsistent with the claims being pursued by the Union, General Counsel asks the ALJ and the Board to take positions inconsistent with the charging party and to seek potentially inconsistent legal remedies – *i.e.*, from a judicial standpoint, the risk of inconsistent remedies is generally to be avoided. Likewise, General Counsel is completely ignoring necessary deference to the binding grievance procedure (at least that is what is claimed by the Union). Again, the Union and General Counsel should not be allowed to pursue these

contrary and inconsistent positions and the ALJ's failure to dismiss on that basis should be rectified.

V. The ALJ's Imposition Of A More Stringent and Severe Remedy Was Improper

Throughout this litigation, including the ALJ hearing and post-hearing briefs, Counsel for General Counsel (and the UMWA) have requested and proposed a so-called Transmarine remedy with regard to the alleged 8(a)(5) violation – *i.e.*, two weeks back pay to the 21 laid off employees while the parties bargained regarding the layoff. See Transmarine Navigation Corp., 170 NLRB 389 (1968). In proposing that remedy, Counsel for General Counsel recognized two critical facts – (1) the Union sought bargaining only with regard to the layoff selection process and not with regard to the decision to layoff[14] (69-70; Post-Hearing Brief of General Counsel at 17) and (2) Taft's and Alabama Power's decision to reduce coal production by 125,000 tons was clearly the sort of clear, entrepreneurial decision of which decision bargaining is typically not required.[15] In any event, despite the fact that both General Counsel and the UMWA proposed a Transmarine remedy, the ALJ decided to impose a more severe full back pay and reinstatement remedy, a remedy which is clearly inapplicable in the present circumstances.

Importantly, while the Board has recognized that there may be a decision bargaining obligation with regard to layoffs even where those layoffs result from core entrepreneurial or

---

[14] Where a Union is notified of an impending layoff and pursues bargaining only as to the layoff procedure (and not the layoff decision itself), the Union can be found to have waived decision bargaining. North Star Steel Co. 347 NLRB No. 119 (2006).

[15] It is well established that certain management decisions which may have a direct impact on employment but which focus instead on economic profitability rather than the employment relationship do not require decision bargaining. First National Maintenance Corp. v. NLRB, 452 US 666 (1981). The layoff decision here was precisely that – *i.e.*, a decision which focused entirely on profitability (or better put, reducing losses) by cutting 125,000 tons of production under the Alabama Power contract. While that decision had an impact on the employment relationship (*i.e.*, requiring a reduction in force), the decision clearly was not about the employment relationship. As such, decision bargaining was not required.

operational decisions, the Board has also determined that the applicable remedy in such circumstances is a Transmarine Navigation remedy as opposed to a full back pay and reinstatement remedy. See, *e.g.*, Bridon Cordage 329 NLRB No. 35 (1999); see also North Star Steel Co., 347 NLRB No. 119 (2006). That is precisely the situation here where the layoff decision was the sole and direct result of Taft's and Alabama Power's core business decision to reduce production under the Alabama Power Coal contract by 125,000 tons per year.

Further, the remedy imposed by the ALJ is even more inappropriate in light of the fact that the parties have been bargaining over a new collective bargaining agreement and the June 27 Taft Choctaw layoff since October of 2012 – *i.e.*, some ten months at this point. Under those circumstances, one would question whether even a Transmarine remedy is appropriate but there can be no question that the remedy imposed by the ALJ is entirely inapplicable and primarily punitive in those circumstances.

On a different note and as noted earlier, even if the Company had employed the Union's requested "seniority only" selection process, 17 of the 21 employees laid off would still have been selected for layoff. Moreover, at the hearing in this case, the Union conceded that that was all that the Union would have requested in bargaining. (69-70). As such, even the Transmarine two-week back pay remedy proposed by General Counsel should be limited to the four employees who might otherwise have been retained. See, *e.g.*, Gulf States Manufacturing, Inc. v. NLRB, 704 F.2d 1390(5th Cir. 1983) (back pay order should not be enforced where result would be to put employee in better position than he would have been even without alleged violation.) Here, by the Union's own admission, had the parties met and negotiated prior to the June 27 layoff, the 17 junior employees would have been laid off in any event. As such, any back pay or reinstatement remedy on their behalf would be entirely inappropriate.

In summary, there was no Section 8(a)(5) violation. First, there was no failure to bargain – Taft did precisely as the Union requested. Likewise, in light of the grievance pursued by the Union, the Union (and General Counsel) should be estopped from even alleging a failure to bargain. Further, in the context of this case, even if there was a failure to bargain, the ALJ was clearly in error by rejecting the Transmarine remedy requested by General Counsel and substituting an entirely overreaching, onerous and inappropriate remedy. And finally, even if there was some technical violation, the requested Transmarine effects bargaining remedy (2 weeks) should be limited to the four affected employees.

VI. The ALJ's Single Employer Finding was Erroneous and Ignored Substantial Contrary Evidence

The law is well established that a "single employer" will be found to exist in circumstances when two nominally separate entities are in actuality a single integrated enterprise. Normally, four principal factors are examined to determine whether the separate entities constitute a single-integrated enterprise:

(a) Functional interrelation of operations

(b) Centralized control of labor relations

(c) Common management

(d) Common ownership or financial control

See, *e.g.*, Radio Union v. Broadcast Service of Mobile, 380 U.S. 255(1965).

The ALJ has found that Walter Energy, Walter Minerals and Taft Coal constituted a single employer by finding that there was strong evidence of common management, mixed evidence of interrelation of operations and significant evidence of common control of labor relations. The ALJ's findings of common management were based entirely on the fact that certain common officers or directors were identified on the corporate summary sheets (JX2(a))

but entirely ignored the fact that there is absolutely no common day to day management as between the three separate corporations. Likewise, the ALJ's finding of common control of labor relations is based almost entirely on the fact that Mr. Scheller and Mr. Lynch (Walter Energy representatives) had dealings with the Union regarding the Taft neutrality agreement and the June 27 layoff while entirely ignoring the fact that those dealings were initiated by the Union and not by Walter Energy and further ignoring the fact that the parties had contractually agreed that such dealings would not constitute evidence of joint or single employer status. As explained below, the finding of single employer status is entirely erroneous and ignores voluminous evidence of separation as between Walter Energy, Walter Minerals and Taft Coal.

Here, while there is no dispute regarding common ownership (*i.e.*, Walter Minerals and Taft are first and second tier subsidiaries of Walter Energy which is a publicly traded, publicly owned corporation), each of the other three factors weigh heavily against any finding of "single employer" status. More specifically, there is no functional integration or interrelation of operations between Walter Energy, Walter Minerals and Taft. Rather, contrary to the ALJ's findings and suggestions, each of the entities has a separate business location and each is operationally independent of the other. Likewise, there is no centralized control of labor relations. Taft handles its own labor relations through its own HR Director and independently of Walter Energy. Finally, there is no common management – in fact, there is absolutely no common day to day management among the executive and management staffs of Walter Energy versus Taft and Walter Minerals.

Taft, Walter Minerals and Walter Energy are each separate corporations with separate boards of directors, management staffs, states of incorporation, etc. (164; JX1; JX2(a)). Walter Energy is a large publicly traded corporation with a number of subsidiaries. (231; JX1; RX15).

Jim Walter Resources, one of those subsidiaries, operates underground mines, has separate headquarters and thousands of employees. (232).[16] In addition to JWR, Walter Energy has a number of other first level subsidiaries – Walter Minerals, Western Energy, Blue Creek Coal Sales, Walter Coke, etc. (234-235; RX15). In addition, Walter Minerals has two subsidiaries – Taft Coal Sales and Tuscaloosa Resources, Inc. (235; RX15) and Taft operates two separate surface mines – Choctaw and Reid School. (236; RX15).

A. Separate Operations

The ALJ essentially ignored the undisputed facts regarding the operations of the entities in question. Again, Walter Energy, Walter Minerals and Taft are separate and distinct operations. Taft's Choctaw Mine is located in Walker County, Alabama some 40-50 miles from Walter Energy headquarters near Birmingham. (JX1; JX2(a)). All operations at Taft are supervised and managed by Taft management supervisors (31, 48) and Walter Energy does not involve itself in the day to day operations and management of Walter Minerals or Taft Coal other than that those entities and subsidiaries report their financials to Walter Energy.[17] (143, 164, 182). Rather, Taft and Walter Minerals are each responsible for their own respective operations and financial performance. (164).

Taft has its own federal employer ID number and pays (or is charged back for) its own taxes. (165-166; RX9). Taft also has its own separate employer identification numbers and experience ratings with the Alabama Department of Labor and the Alabama Unemployment Compensation Department. (189-191; RX8). Likewise, within a master insurance policy, Taft

[16] Walter Energy moved its corporate headquarters from Tampa, Florida, to Birmingham, Alabama approximately 2 years ago. (233-234).

[17] The ALJ relied in part on this fact to support his single employer analysis (ALJD 3:30). To do so, however, is absurd in that every wholly owned subsidiary of every parent corporation reports its financials to the parent. As such, that fact has absolutely no relevance to any single employer analysis. Here, Walter Energy is a publicly traded NYSE corporation which is required to periodically report financials and earnings. It must have the financials of its subsidiaries (like Taft) to do that. Clearly the ALJ's focus on this fact is sorely misplaced.

has its own specific insurance coverage and pays its specific portion of the master insurance premium. (169). Taft has its own bank accounts and handles its own accounts receivable and purchasing. (188-189; RX7). Taft also has its own financial reports, financial statements and separate financial accounts. (171). If and when equipment is sold or transferred from Taft to another Walter Energy subsidiary, Taft is compensated for that equipment. (227). Finally, there is no evidence whatsoever of employee transfers, sharing or movement between Taft or Walter Minerals and Walter Energy.

Clearly, Walter Energy, Walter Minerals and Taft are operationally and functionally separate. In fact, Walter Energy goes to great lengths to maintain arms length arrangements with its subsidiaries and second level subsidiaries. (173).[18]

B. Separate Labor Relations[19]

Again, despite the ALJ's strained and factually inaccurate finding to the contrary, the overwhelming evidence shows that Taft's labor relations are separate and decentralized from Walter Energy. After Taft was acquired by Walter Minerals in approximately 2008, Steve Dickerson became the HR Director for both Taft and TRI and has been primarily responsible for day to day employment and labor relations matters at those operations. (181-182).[20] Since the

[18] As to Walter Energy and Taft Coal, there is no evidence of functional integration or interrelation of business, no evidence of common customers and no evidence of common supervision, sales forces, supplies and equipment, accounting, bank accounts, office staff, etc. Likewise, there is no evidence of any interchange or transfer of employees or supervision as between Taft Coal and Walter Energy or any exchange or borrowing of equipment (other than arms lengths transactions regarding the same). Further, there is no evidence of the same or similar compensation and benefits as between Walter Energy and Taft Coal – rather, the undisputed evidence is that Taft's wage levels, and employee benefits, are entirely separate and independent from those of Walter Energy

[19] The degree and extent of centralized control of labor relations is generally considered the most significant factor in determining single employer status and typically outweighs the three factors. See, *e.g.*, First Big Mountain Mining Co., 1994 NLRB LEXIS 587*18(1994). Here, a proper analysis of the facts shows virtually no actual control or involvement in Taft's labor relations by Walter Energy.

[20] Walter Minerals acquired Taft in approximately 2008. (181). Prior to that acquisition, Taft was a stand alone operation owned by A. J. Taft. (181).

2008 acquisition, Walter Energy has had no input or involvement in Taft's day to day employment, human resources or labor relations matters. (164, 182). Taft, without the involvement or direction of Walter Energy, handles its own hiring decisions, termination and discipline decisions, promotions and transfers, wage determinations, employee benefit levels and determinations, leave policies, performance reviews, attendance plans, bonus programs, etc. (165, 170, 183-184). More specifically, Taft maintains its own personnel and employment records and I-9 files. (185). Likewise, Taft files I-9 forms in its own name and has its own federal employer identity. (185-187; RX10). Taft's wage and benefit packages and bonus plans are separate and distinct from those of Walter Minerals and/or Walter Energy. (184-185, 241-244). Importantly, Taft is responsible for making its own staffing and layoff decisions and, contrary to the ALJ's erroneous factual finding (ALJD 9:23-28) Walter Energy had no involvement in such decisions, including the June 27 layoff selections at issue here. (154). And again, there is no evidence whatsoever of shared employees as between Taft or Walter Minerals and Walter Energy.

Equally importantly, Walter Energy has not been involved in the Taft/TRI negotiations with the UMWA nor was it a party to the Reid School Closure Agreement. (191-194; 65-66; 161; RX11).[21] Likewise, Taft and Walter Minerals had no involvement in negotiating or agreeing to the Neutrality and Card Check provisions in the 2011 JWR-UMWA contract. (198). Taft management, and not Walter Energy, have determined Taft's position in Taft's current negotiations with the UMWA. (162). In fact, all labor relations are handled by local management at Taft and/or Walter Minerals and not by Walter Energy. (143-144). Again, other

[21] Walter Minerals has been involved in those negotiations to some extent since panel rights at other surface mines were subject to negotiation. Moreover, as explained at the hearing, neither Taft nor Walter Minerals can agree to panel rights at JWR mines because Taft and Walter Minerals do not have the authority to bind JWR – they are separate and distinct entities and subsidiaries. (220-221).

than the communications with the UMWA regarding the Card Check and Neutrality issues and the fact of the June 27 layoff, Walter Energy has had no involvement or dealings in the Taft-UMWA labor relations matters or other Taft human resources or employment matters. (171-172).[22]

C. Common Management

Quite simply, Walter Energy does not share any common management with either Taft or Walter Minerals and there is absolutely no evidence whatsoever to suggest any common management. In his zeal to find single employer status, the ALJ concluded that there was common management based on a small handful of officers and/or directors as shown on the corporate summary sheets submitted as JX2(a). In doing so, however, the ALJ simply ignored the undisputed evidence that Walter Energy had no involvement whatsoever in the day to day management of Walter Minerals and/or Taft Coal. Rather, Taft's day to day management was handled by Jan Kizziah, David Peters, Steve Dickerson and other Taft managers and supervisors (JX1; 31; 48; 153; 182; RX11; 191-193; 206; 222; 230) - none of whom hold any position whatsoever with Walter Energy.

D. The ALJ's Factual Reasoning Is Erroneous and Flawed

It would appear that, in finding common control of labor relations and single employer status, the ALJ relied quite heavily on the communications and dealings between Walter Energy (more specifically, Mr. Scheller and Mr. Lynch) and UMWA Representative Dewberry regarding the Neutrality and Card Check provisions, the discussions and negotiations surrounding those matters and the communications and discussions relating to the June 27 layoff

[22] Had it not been for the single employer proviso in the neutrality/card check agreement, Mr. Lynch is clear that he would not have had direct communications or dealings with the UMWA regarding the neutrality and card check provisions or the June 27 layoff. (173).

at Taft's Choctaw Mine (ALJD 9:10-34).[23] However, when viewed in proper context, those communications and dealings are entirely insufficient to establish single employer status, especially in light of the overwhelming evidence that Taft, Walter Minerals and Walter Energy each and all operate as entirely separate entities and employers.[24] Moreover, there is a clear reason for these dealings between Walter Energy and the UMWA and a clear prohibition as to using those dealings and communications to prove or as evidence of joint or single employer status.

As to the explanation for these communications, Mr. Lynch candidly testified at trial that the only reason that he and Walter Energy communicated directly with the Union was the fact that Mr. Dewberry continually initiated and directed his inquiries and communications to Walter Energy rather than Taft. (130, 137, 142-143). As Mr. Lynch explained, had the Union's communications and inquiries gone directly to Taft, he likely would never have been involved in any of those dealings or communications. (144). Further, the ALJ's reasoning completely ignores the fact that Walter Energy (and not Walter Minerals or Taft) was the signatory party to the Card Check and Neutrality provisions of the JWR contract (RX13(a)). As such, Walter

[23] The ALJ apparently based his "common control of labor relations" finding on his conclusion that Mr. Lynch, Walter Energy's VP of Human Resources, "became heavily involved in Taft's labor relations issues when he notified the Union about Taft's layoff, met with the Union about this matter and scrutinized the layoff list before its release" (ALJD 9:23-25). A close analysis of the ALJ's reasoning shows just how inaccurate and flawed his reasoning was. First, the simple fact that Lynch notified the Union of the layoff when the Union had been reaching out to Lynch and Scheller all along is simply ridiculous and certainly insufficient to create a single employer relationship. Likewise, the fact that Lynch met with the Union about the layoff (on July 9 – some twelve days after the layoff) is equally irrelevant when the Union reached out to Mr. Lynch (not Taft) and requested such a meeting. Finally, the finding that Lynch scrutinized the layoff list before its release is simply untrue and contrary to the undisputed evidence in this case – Lynch first reviewed the layoff list immediately before the July 9 meeting with the Union and had no involvement or input whatsoever in the layoff selection process. (154).

[24] In order to find centralized or common control of labor relations matters, there must be evidence that the parent company (Walter Energy) actually exerts significant control or input regarding the employment relationship – *i.e.*, hiring, firing, discipline, supervision and direction. See, *e.g.*, Riverdale Nursing Home, 317 NLRB 881 (1995). Here, the evidence is undisputed that Taft handles its own hiring, firing, discipline, supervision, etc. and that Walter Energy has no input or control over such matters (165; 170; 183-184).

Energy was responsible for compliance with those provisions, including the card check and recognition procedures and insuring compliance with the neutrality obligations of the surface mining subsidiaries.[25] The ALJ's strained efforts to use these neutrality and card check dealings to prove single employer status underscores either his mindset regarding this case or his fundamental misunderstanding of the facts.[26]

Moreover, the Neutrality and Card Check provisions in the JWR-UMWA Labor Agreement provide that nothing in those provisions "its implementation, its execution, the discussions leading to its execution, or the negotiations for the labor agreements for any of the above described mines shall create or be used or offered as evidence, in any forum to create a joint employer, single employer, alter ago, agency, successor or other type relationship" (143; Addendums 2, 3 and 4 of RX13(a)). In other words, the UMWA specifically agreed with JWR and Walter Energy that neither the Neutrality and Card Check procedures nor the extension of those provisions to other Walter Energy operations (such as Taft) nor any subsequent dealings or labor negotiations would be evidence or used as evidence of any joint or single employer

[25] The ALJ also erroneously reached a finding of single employer/common control of labor relations by pointing to the fact that Scheller, CEO of Walter Energy, told the Union that if Hill had made the mine closure threat, he would fire him (ALJD 6:29-30; 9:18-19). The ALJ then seemed to criticize Respondents by saying that "Scheller was, without explanation, not called to rebut this testimony." (ALJD 6:fn.15) Why in the world would Respondent call Scheller to rebut this testimony?! First and foremost, Scheller probably made those comments in light of Walter Energy's commitment to neutrality in the Union recognition process. Moreover, assuming he did make those comments, why would the ALJ criticize such a position when Walter Energy was committed to that position through the Neutrality Agreement? Here, Scheller was responding to the Union's complaint and properly confirming his commitment that Walter Energy and its subsidiaries would remain neutral in the card check procedure. For the ALJ to attempt to twist those facts into evidence of meddling in the subsidiary's labor relations matters is nothing short of absurd and is yet another reason that the ALJ's single employer finding is due to be reversed.

[26] Amazingly, the ALJ further supported his single employer finding/common control of labor relations finding on the actions of Walter Energy's CEO, Walt Scheller. In this regard, the ALJ somehow faults Scheller for hearing and receiving the Union's complaints regarding alleged Neutrality Agreement violations and the layoff in question. In fact the ALJ goes so far as to say that it is "highly significant" that Scheller never refused to deal with Dewberry because Taft was an independent subsidiary (ALJD 9:15-21). In light of the fact that Walter Energy is not only a parent company of Walter Minerals and Taft but also the signatory party to the Neutrality and Card Check provisions in question, this reasoning on the part of the ALJ borders on the ridiculous! The very thought that Scheller would sign a Neutrality Agreement on behalf of Walter Energy and then refuse to deal with the Union when a subsidiary allegedly violates that agreement is laughable and this ALJ's reasoning to the contrary is clearly due to be reversed.

status.[27] Despite that agreed upon prohibition, that is precisely what the ALJ did do in this proceeding and such matters should not be allowed or condoned. Rights and obligations of the parties obtained through collective bargaining should not be ignored by the ALJ. To do so would be to ignore federal labor policy supporting the sanctity of collective bargaining and is generally contrary to public policy.

In summary, contrary to the ALJ's decision, the overwhelming evidence shows that Walter Energy, Walter Minerals and Taft are not a "single employer." And that fact (and the intent of the parties) is further emphasized by the "single employer" prohibition contained in the Neutrality and Card Check Addendums to the 2011 JWR Coal Wage Agreement.[28]

VII. The ALJ's 8(a)(1) Findings are Improper, Erroneous, Unsupported by the Evidence as a Whole and, In Some Instances, Directly Contradicted by the Undisputed Evidence

As to the Section 8(a)(1) threat of closure claim, the ALJ found that supervisor Hill had in fact threatened plant or mine closure to Plunkett on March 22, 2012 and based that finding almost entirely on a credibility determination. In doing so, the ALJ erroneously ignored Plunkett's own testimony which seriously undermined his own credibility. For example, according to Plunkett's sworn statement, this discussion occurred during the first or second week in March (29-30; 34). However, at the hearing, Plunkett changed his testimony as to when this conversation occurred and then claimed that his recollection was better now than it was in

[27] Further, to hold that such dealings between Walter Energy and the UMWA regarding the Card Check and Neutrality provisions is somehow evidence of common control of labor relations for single employer purposes is bad policy and contrary to the Board's preference for cooperation and collaboration between the parties vis-à-vis the Union organizing and recognition process. In this regard and quite simply, if dealing with a Union over Card Check and Neutrality issues is going to subject a parent company to single employer status with its subsidiaries, companies will be very reluctant to enter into Card Check and/or Neutrality agreements. Here, Walter Energy entered into those agreements with the UMWA in good faith and dealt with the UMWA about those provisions in good faith. To somehow interpret that as constituting single employer evidence is simply wrong and the ALJ's reasoning and findings are due to be reversed.

[28] The UMWA is clear that it is not claiming that these entities are a "single employer" (85).

September, 2012 when he gave his sworn testimony to the NLRB (35-36). Plunkett gave the less than credible explanation that, in September, 2012, he had other things on his mind when he gave his statement to the NLRB and he didn't have sufficient time to think in answering those questions (35-36).

Hill, on the other hand, gave precisely the same testimony at the ALJ hearing as he gave in his Board statement months earlier. More specifically, Hill candidly admitted that he had a similar conversation with an employee named Tommy Cook but that he never had any such conversation with Mr. Plunkett (116-118). In fact, Hill went so far as to admit that there was a complaint about his alleged comment which was investigated by Mr. Dickerson in early March of 2012 (124). As such, it was Hill's testimony which was consistent and credible while Plunkett's testimony at the hearing was inconsistent and less than credible. The ALJ's strained reasoning for discrediting Hill's testimony (*i.e.*, that Hill was concerned with being fired by Scheller if he admitted such a threat) has no evidentiary foundation and is simply further indication of the ALJ's mindset with regard to this entire case – *i.e.*, that regardless of the evidence, he would find a way to rule against Respondents on every issue.

The ALJ was also in error in finding that this alleged conversation occurred on or about March 22, 2012. As noted above, Plunkett's sworn statement to the NLRB indicated that this discussion occurred in early March of 2012. Further, Plunkett admitted that, if there was evidence suggesting that the conversation occurred prior to March 9, he would not dispute that fact (37). In that regard, Dickinson testified that according to his own calendar, his meeting with Mr. Hill regarding the alleged threat occurred on March 9, 2012, such that, the alleged threat would necessarily had to have occurred before March 9, 2012 (201-203; 221). As such this

charge is untimely, since the first allegation of any such threat occurred in the charge/amended charge filed on September 25, 2012 (General Counsel's Ex. 1).

Likewise, the ALJ erroneously found that Hill interrogated Jones and that that discussion/interrogation occurred on March 22, 2012. Again, the ALJ based this determination entirely on credibility along with his completely artificial and erroneous determination as to when that discussion occurred. At the hearing, Jones indicated that Hill asked Jones how he had voted regarding the Union and that Jones replied that he "didn't vote" (45-46). Importantly, Jones was adamant in his testimony that he did not want anyone to know whether he was for the Union or not (50, 52). Despite repeatedly insisting that he did not want anyone to know whether he was for the Union or not, Jones was forced to admit that he wore a UMWA sticker on his hard hat every day for at least two months prior to this conversation (52-53, 54). Likewise, in his sworn statement to the NLRB, Jones admitted that he wore a UMWA T-shirt on several occasions (55).[29] At the hearing, Jones' credibility was entirely undermined by his inability to reconcile his alleged secrecy as to his Union support with his daily and blatant showing of support for the Union. The ALJ erroneously ignored Jones' lack of credibility and instead again strained and manipulated the facts to suggest that it was Hill who was not credible.

The ALJ's stubborn intent to find violations, irrespective of the evidence, is underscored by the ALJ's finding that the Hill-Jones conversation occurred in March of 2012 rather than on June 25, 2012 as alleged in the complaint and as Jones testified (ALJD 5:fn9; 45-46; 23). Put another way, the ALJ completely ignored General Counsel's amendment to the complaint showing that the alleged conversation occurred on June 25, 2012 (23) and the sworn testimony of Jones (45) and, with no evidentiary basis whatsoever, found that the conversation occurred on

[29] At the hearing, Jones insisted that he wore the T-shirt on only one occasion, but a review of the transcript clearly indicates that his testimony in this regard was both defensive and contrived.

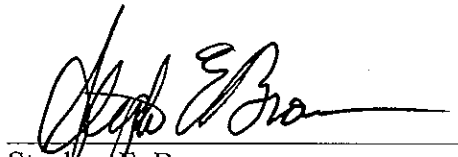
March 22, 2012. That finding is due to be reversed as completely contrary to the claims in the case and to the only testimony supporting such claims.

Moreover, the ALJ's rationale for "changing" the date to March 22 was that it would have been improbable for any such discussion to have occurred in May or June, well after the Union votes had been cast and the Union certified. Under that rationale, the ALJ's finding that the conversation occurred at all is clearly due to be reversed. Put another way, based on the amended complaint and the only supporting evidence in the case, the only possible finding is that the alleged conversation occurred on June 25, 2012. However, according to the ALJ's own reasoning, it is entirely improbable that any such conversation would have occurred at that time. As such, the finding that any such conversation occurred is due to be reversed as is the finding of an 8(a)(1) violation.

In summary, both Section 8(a)(1) violations are due to be reversed.

VIII. Conclusion

For the reasons set forth above, Respondents respectfully request that the Board overturn and reverse the ALJ's findings that (1) Respondents constitute a single employer, (2) there was any violation of Section 8(a)(5) and (3) there were any violations of Section 8(a)(1) of the Act.[30]



Stephen E. Brown
Attorney for Respondents, Taft Coal Sales & Associates, Inc (a Separate Employer), Walter Energy, Inc. (a Separate Employer) and Walter Minerals, Inc. (a Separate Employer)

[30] Should the Board affirm the ALJ's finding of an 8(a)(5) violation, Respondent(s) respectfully request that any reinstatement or back pay remedy be limited to the typical Transmarine Navigation remedy and applied only to the four employees who would not have been selected for layoff had the Union's seniority only selection process been utilized.

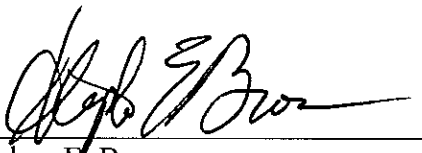
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203-2618
205-254-1023
sbrown@maynardcooper.com

CERTIFICATE OF SERVICE

I hereby certified that I have filed this Brief in Support of Respondents' Exceptions To ALJ Decision on July 25, 2013 electronically through the NLRB's website, www.nlrb.gov, and have served a copy of the Brief on:

Jeffrey D. Williams, Esq.
National Labor Relations Board
Region 10
233 Peachtree Street, NE, Harris Tower
Suite 1000
Atlanta, GA 30303

Judith Rivlin, Associate General Counsel
UMWA Legal Department
18354 Quantico Gateway Drive
Suite 200
Triangle, VA 22172-1779



Stephen B. Brown