UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

ABB INC.,	)	
	)	
Respondent,	)	
	)	
and	)	Case No. 14-CA-099392
	)	
LOCAL 2379, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,	)	
	)	
Charging Party.	)	

CHARGING PARTY'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION:

To prevail on a motion for summary judgment the moving party must demonstrate that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. See generally Rule 56, Federal Rules of Civil Procedure. The Board's rule respecting summary judgment, Section 102.24 of the Board's Rules and Regulations, however, is not congruent with Rule 56. Pursuant thereto, it is not required that a non-movant's opposition to a motion for summary judgment "be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing."

MATERIAL FACTS:

For years, ABB Inc. ("ABB" or "the Company") has had a practice at its Jefferson City, Missouri plant of accommodating ***all*** overtime restrictions, regardless of whether permanent or temporary.

In October, 2010, Ricky Phillips ("Phillips") returned from a medical leave during which he underwent surgery to replace both hips.

At the time of his reinstatement, Phillips was seen by Dr. Eddie Runde, the doctor retained by ABB, to determine whether he was fit to return to work.

By report dated October 25, 2010, Dr. Runde released Phillips to return to work with two restrictions.

In his report, Dr. Runde noted that both restrictions were ***permanent***, not temporary.

One of the restrictions was that Phillips work ***no*** overtime.

Email dated October 7, 2010, from then plant Health and Safety Advisor Kevin Moore to other Company officials, including plant Operations Manager Dennis Kemker (Exhibit 2 to the affidavit of Matthew W. Boyle in support of ABB's motion for summary judgment), acknowledges the ***permanency*** of Phillips' no overtime restriction.

Moore's email provides:

> Ricky [Phillips] asked if he can work overtime and I followed up with Dr. Runde and he is only allowed a 40 hour work week with 50# maximum weight lift. These are ***permanent*** work restrictions unless he loses quite a bit of weight according to both Dr. Runde and his surgeon (emphasis added).

ABB honored Phillips' ***permanent*** no overtime restriction for almost ***2 years***, until September 17, 2012, when it placed Phillips on inactive status.

Prior to placing Phillips on inactive status, the Company did not notify or bargain with the Union about its departure from the established practice of honoring ***all*** overtime restrictions.

BASIC ARGUMENT:

Until the Company placed Phillips on inactive status, the Union was unaware of any alleged "practice" of not accommodating employees with permanent overtime restrictions and

another by which only temporary overtime restrictions were honored. As evidenced by Phillips' situation, about which the Company was aware from the very start (see Moore's 10/7/10 email), the Union was aware of just one practice by which all overtime restrictions, permanent or temporary, were honored. This is what distinguishes the instant matter from the disability law cases cited by the Company and belies the Company's claim that working overtime is an essential job function. It is the Company's unilateral departure from this established practice of honoring all overtime restrictions when it placed Phillips on inactive status that led to the filing of the underlying unfair labor practice charge in this matter.

The above establishes that there are genuine issues of material fact such that the Company's motion for summary judgment should be denied forthwith so as not to interfere with the August 28, 2013 trial setting.

Respectfully submitted,

KRETMAR, BEATTY & SANDZA

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2013, a copy of the foregoing document was sent by email, to:

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