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

In the Matter of	:	
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MIKE-SELL'S POTATO CHIP CO.	:	CASE NO. 9-CA-094143
	:	
and	:	
	:	
GENERAL TRUCK DRIVERS, WAREHOUSEMEN, HELPERS, SALES AND SERVICE, AND CASINO EMPLOYEES, TEAMSTERS LOCAL UNION NO. 957	:	

CONSOLIDATED REPLY BRIEF OF RESPONDENT MIKE-SELL'S POTATO CHIP COMPANY IN SUPPORT OF ITS EXCEPTIONS TO THE DECISION OF ADMINISTRATIVE LAW JUDGE GEOFFREY CARTER

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Potato Chip Company

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I. INTRODUCTION[1]

Respondent Mike-sell's Potato Chip Company[2] ("Mike-sell's" or "Company") hereby submits this consolidated reply to the Answering Briefs filed by the Counsel for the Acting General Counsel ("General Counsel") and by the General Truck Drivers, Warehousemen, Helpers, Sales and Service, and Casino Employees, Teamsters Local No. 957 ("Union") in response to Respondent's Exceptions to the Decision and Order of Administrative Law Judge Geoffrey

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[1] Pursuant to Board Rule 102.46(h), Mike-sell's is entitled to have 10 pages to reply to any Answering Brief filed in this case. Because this Consolidated Reply Brief is submitted in response to two separate Answering Briefs (i.e., one from the General Counsel and one from the Union), Mike-sell's should have up to 20 pages (if needed) to craft its reply. Mike-sell's does not intend to use all 20 pages; the Company simply notes the combined page limit to account for the fact that its Consolidated Reply Brief slightly exceeds the normal 10-page limit imposed for reply briefs addressing only a single answering brief.

[2] Mike-sell's Potato Chip Company recently changed its name to Mike-sell's Snack Food Company.

Carter ("ALJ"), which issued in the above-captioned case on June 18, 2013 (JD-40-13) ("Decision").[3] Like the ALJ's Decision, the Answering Briefs completely miss the mark.[4]

II. REPLY ARGUMENT[5]

A. The Answering Briefs' undue emphasis on the collective activity for all three groups of employees perpetuates a distorted and misleading view of the facts.

In an attempt to cast the Union's devious conduct in the best possible light, the General Counsel and the Union support and mirror the ALJ's improper aggregation of bargaining histories for all three groups of employees (i.e., route sales, OTR drivers, and warehouse workers). (GC Brief, pp. 2, 5; Union Brief, pp. 2-11, 13-14, 16; ALJD, pp. 16-18.) This aggregation technique effectively "dilutes" the appearance of the Union's dilatory tactics by focusing on the Union's bargaining behavior overall, rather than just for route sales. This aggregation technique also strategically exploits the parties' tentative agreements for OTR and warehouse employees, touting these limited successes as evidence of pre-implementation progress that precludes a finding of impasse in route sales negotiations.[6] Thus, the aggregation

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[3] Citations to the Decision are parenthetically referenced as "ALJD, p. ___." Citations to Joint Exhibits, Respondent Exhibits, and General Counsel Exhibits are parenthetically referenced as "JX-___," "RX-___," and "GX-___," respectively. Citations to Official Transcript pages are parenthetically referenced as "Tr. ___." The Answering Brief of the General Counsel will be cited as "GC Brief" when referenced individually; the Answering Brief of the Union will be cited as "Union Brief" when referenced individually; and the Answering Briefs of the General Counsel and Union will be cited as "Answering Briefs" when referenced collectively.

[4] Based on a letter from the Board's Associate Executive Secretary dated July 23, 2013, it appears that the General Counsel and the Union were granted a 28-day extension of time to file their Answering Briefs, despite the fact that the undersigned counsel never received notice of any request for extension of time.

[5] Mike-sell's would like to take this opportunity to correct an inadvertent misstatement that was recently discovered in its Brief in Support of Exceptions ("Supporting Brief"), although the misstatement has no effect on the Company's substantive argument. That is, Page 31 of the Supporting Brief incorrectly described the Company's final pension proposal (which has indeed remained unchanged since November 14th) as "agree[ing] to split any future cost increases with employees." (Tr. 270-71.) Page 31 should have instead stated that "Mike-sell's agreed to require employees only to pay the pension increases (not also half of the entire pension contribution)." (Tr. 270-71.) The Company's final pension proposal was initially stated correctly in Section II(H) of the Company's Supporting Brief, but the subsequent reference on Page 31 of the Supporting Brief should be corrected. Again, this inadvertent misstatement has no effect on the merits of the case.

[6] The Union admits in its Answering Brief that the warehouse tentative agreements merely involved "so-called 'housekeeping' issues" and "language" matters, none of which have ever been among the three key issues at the heart of this dispute. (Union Brief, pp. 3, 11.)

of bargaining activity for all three groups of employees is improper, and it results in a distorted view of the Union's behavior, as well as the parties' progress in route sales negotiations.

Only the route sales negotiations are relevant to this case. The parties deliberately held separate negotiations for each group of employees, and the OTR and warehouse employees expressly deferred to the route sales drivers on the key issues of pensions and healthcare.[7] (ALJD, pp. 6-7; Tr. 125, 195, 232-34, 248, 415-16; *see also* Union Brief, p. 9.) It is therefore irrelevant that the parties began warehouse negotiations in September (ALJD, p. 16); that the parties held 12 bargaining sessions for all three groups combined (ALJD, pp. 17-18); that the parties reached tentative agreements for warehouse and OTR employees (ALJD, pp. 16-17); that Mike-sell's expressed satisfaction with the OTR negotiations (ALJD, pp. 16-17); and that the parties met on November 13th, 14th, and 15th (GC Brief, p. 5). The Union only acted in a dilatory fashion with regard to route sales negotiations, as route sales drivers control the ultimate outcome on the three key issues. Accordingly, the Union's pre-implementation delay tactics with regard to route sales negotiations carry special significance and must be considered within a limited context.[8] (Supporting Brief, pp. 4-5, 8-12, 14, 19-22.) Furthermore, the tentative agreements for OTR and warehouse employees had no effect on, and did not bring the parties any closer to agreement on, the key issues facing both bargaining units (e.g., healthcare and

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[7] Although the OTR drivers and route sales drivers are in the same bargaining unit, these two groups of employees have very different jobs and compensation structures. (Tr. 27-28, 77-78, 106.) Most of the terms of the parties' labor agreement relate only to route sales drivers. Very few contract provisions are unique to OTR drivers; so few, in fact, that the parties relegated the OTR-specific provisions to a short appendix at the back of the route sales labor agreement. (Tr. 450.) Hence, it is clear that the crux of the parties' negotiations hinges on the route sales drivers.

[8] The Union underhandedly attempts to introduce evidence outside the record by discussing the filing and dismissal of a bad faith bargaining charge against the Union. (Union Brief, pp. 16-17.) The Union's reference to this extraneous material is improper and should be stricken. The fact that the Company filed such a charge (or that such a charge was dismissed) is irrelevant to this proceeding. Had Mike-sell's attempted to introduce evidence of its then-pending charge during the hearing before the ALJ, the Union and General Counsel both undoubtedly would have raised staunch objections. Furthermore, despite the Union's misleading assertion, the Company's charge was not dismissed "essentially for the same reasons cited by [the ALJ] in his Decision." (Union Brief, p. 16.) In fact, the ALJ expressly refused to consider several indicia of the Union's post-implementation bad faith bargaining that was proffered by Mike-sell's at the hearing. (Supporting Brief, pp. 14-16, 29-30.)

pension), which are the same issues (in addition to route sales commissions) that ultimately resulted in a bargaining impasse.

B. Contrary to the assertions in the Answering Briefs, the parties' limited progress and discussion of future meetings at the November 14th bargaining session do not signify an absence of impasse.

The ALJ, the General Counsel, and the Union all emphasize that each party made some limited concessions at the November 14th bargaining session, and at the end of that session, the parties discussed the potential for future meetings. (ALJD, pp. 10-11, 17-18; GC Brief, pp. 2-3, 5; Union Brief, pp. 9-11, 14-16.) While these facts may be relevant to the analysis, they cannot "carry the day" in light of the actual state of the parties' negotiations at the time of implementation on November 19th.

There is no less of an impasse just because parties happen to reach agreement on some issues and are therefore closer to agreement than they were previously; "a deadlock is still a deadlock whether produced by one or a number of significant and unresolved differences in positions."[9] *Taft Broadcasting Co.,* 163 NLRB 475, 478 (1967). Situations may arise "in which impasse on a single or critical issue creates a complete breakdown in the entire negotiations," especially when parties reach a stalemate on the discrete issues of wages or pensions.[10] *Sierra Publishing Co.,* 291 NLRB 552, 554 at fn.11 (1988) (citing *Taylor-Winfield Corp.,* 225 NLRB

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[9] Cases cited by the Union on the issue of "recent bargaining movement" are easily distinguishable because, in each case, the union made numerous affirmative efforts to keep the lines of communication open and show a willingness to further compromise its position. (Union Brief, p. 15.) Unlike the facts in this case, in *J. Josephson*, 287 NLRB 1188, 1190 (1988), no impasse was found because there was "constant discussion and movement by the parties," "[t]he Union offered to meet every day and the Company said its position was not chiseled in stone," and the parties met twice with the mediator because the union "kept asking for further discussions" and indicated a willingness to change its proposals on specific issues, which it did even through the last bargaining session. In *Towne Plaza Hotel,* 258 NLRB 69, 78 (1981), no impasse existed where the union unsuccessfully attempted several times to reach the employer before implementation and repeatedly requested dates for negotiations—which is completely opposite of the Union's conduct in this case.

[10] The Union cites *Sierra Publishing Co.,* 291 NLRB 552 (1988), for the proposition that "impasse must be reached not as to one or more individual contract items, but on the agreement as a whole." (Union Brief, p. 13.) Ironically, *Sierra* actually clarifies that "[t]he Board has long distinguished between an impasse on a single issue that would not ordinarily suspend the duty to bargain on other issues and the situation in which impasse on a single or critical issue creates a complete breakdown in the entire negotiations," and "in this latter context where there has been a complete breakdown in the entire negotiations . . . the employer [is] free to implement its last, best, and final offer." *Sierra,* 291 NLRB at 554.

457 (1976) [impasse over pensions justified implementation of entire final offer, including wage proposals over which parties were still negotiating]; *Holmes Typography, Inc.*, 218 NLRB 518 (1975) [impasse over wages and length of workweek justified implementation of entire final offer, including issues over which parties were still negotiating]). In the end, it must appear that there has been a genuine exhaustion of productive discussions and an unwillingness by both parties to compromise any further toward reaching an agreement. Where good faith bargaining has not resolved key issues and there are no definite plans for further sessions to break the deadlock, a finding of impasse is warranted. *See, e.g., Dallas Gen. Drivers, Local No. 745 v. NLRB,* 355 F.2d 842, 854 (D.C. Cir. 1966).

There is also no less of an impasse just because parties discuss a general intent to comply with their legal obligations to continue bargaining in the future. Mike-sell's had no reason to be optimistic about breaking the deadlock on the three key issues based merely on the Union's offer to continue bargaining at some unspecified point in time. There was nothing "magical" or "promising" about such an offer; indeed, a refusal to bargain would be unlawful. Obviously, the Union was quite content to continue negotiations under the terms of the expired Labor Agreements for as long as possible, given the Company's concessionary proposals. However, a willingness to continue bargaining is merely a legal obligation that has little to do with whether a party is willing to actually change its position.

The controlling factor in *Grinnell Fire Protection Systems Co.,* 328 NLRB 585, 586 (1999), upon which the ALJ, the General Counsel, and the Union rely, is that the parties must indicate a "willingness to compromise further" on specific issues. In *Grinnell*, the union not only expressly declared an intent to remain "flexible" during the final bargaining session, but the union also repeatedly emphasized that its most recent offer was not its last; emphasized

specifically that it would be open to the employer's benefits plan in order to avoid an impasse; proposed significant economic concessions and asked where additional concessions were needed before the final meeting ended; followed up with the employer the very same day that the final meeting ended, asking to meet again the next day; and urged the parties to engage a federal mediator. *Id.* at 585-86, 594-95, 598-99. This express "willingness to compromise further," in conjunction with the parties' recent movement on critical issues, led to a finding of no impasse.

Similarly, in *Royal Motor Sales,* 329 NLRB 760, 772-73 (1999), after (and in direct response to) the employer's announcement of impasse, and before the employer's unilateral implementation, the union conceded—for the very first time—that it would accept a flat-rate wage and that it would prepare a flat-rate proposal for the employer's review. Not surprisingly, no impasse was found where the employer completely ignored the union's brand new offer to prepare a flat-rate proposal to avoid impasse and instead implemented the employer's own terms.

In short, *Grinnell* and *Royal Motor Sales* are easily distinguishable from this case, where it is clear that the parties were at impasse at the time of implementation.[11] The Union ended the last pre-implementation bargaining session by admitting that the parties had not "moved the ball very far." (Tr. 456-57.) Despite the Company's repeated requests from November 2nd through November 16th, the Union provided no definite dates for future bargaining sessions,[12] and it

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[11] In its Supporting Brief, Mike-sell's explained that "the parties reached impasse on November 17, 2012, when the contract expired," but that "the impasse became even more clear by November 19th, when the Union continued to 'stonewall' the Company." (Supporting Brief, footnote 18.) The General Counsel attempts to mischaracterize this explanation as an "ironic admission" that Mike-sell's "set the November 17 [contract] expiration date as an artificial deadline for working out a new agreement." (GC Brief, p. 4 (citing ALJD, p. 17).) The General Counsel's flawed logic mistakes the Company's explanation and description of timing (i.e., when the impasse occurred) for an explanation of cause (i.e., why the impasse occurred). Although the timing of the impasse happened to correlate with the expiration of the route sales contract, Mike-sell's has never suggested that the impasse was caused merely by the expiration of the labor agreement. In any case, whether or not an impasse first existed sometime before November 19th is largely irrelevant to whether an impasse existed on November 19th, the date of implementation.

[12] In discussing the events between November 16th and November 19th, the Union heralds the fact that it "offered to meet with [Mike-sell's] on November 27 and 30," although it cites no testimony in the record to support this assertion. (Union Brief, p. 12.) In similar fashion, the General Counsel vaguely asserts that "the Union was unable to meet on the dates requested and made itself available on other dates." These references are quite misleading, as both the Union and the General Counsel

gave no indication that it was willing to change its position.[13] (Tr. 460-64.) Mike-sell's had already made significant movement on the issues of commissions and pensions, and the Company knew that its November 14th proposals were as far as the Company was willing to move.[14] (Tr. 462.) Thus, at no time during the November 14th meeting or before the November 19th implementation did either party state or imply a "willingness to compromise further" on any of the three key issues, as required to avoid a finding of impasse under *Grinnell*. (Tr. 460-64.) Because an impasse existed on the key issues as of November 19th, Mike-sell's was permitted to implement terms for both bargaining units consistent with its pre-impasse Final Offers. *See, e.g., Taft,* 163 NLRB 475, 478; *Dallas,* 355 F.2d 842, 854.

C. The Answering Briefs fail to rebut the distinguishable facts in *Newcor* and *CBC Industries* that make those cases inapplicable here, thus demonstrating that the ALJ's reliance on *Newcor* and *CBC Industries* is indeed misplaced.

The ALJ relied on the fact that Mike-sell's "repeatedly declared its intention to move on from the expiring contracts" to support his finding that no impasse existed and that the Company had merely established an "artificial" or "arbitrary" deadline for negotiations. (ALJD, pp. 18, 19.) The ALJ cites *Newcor Bay City Division*, 345 NLRB 1229, 1240 (2005), and *CBC Industries*, 311 NLRB 123, 127 (1993), to support his finding of no impasse, but these cases are

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conveniently neglect to clarify that the Union failed to respond at all to the Company's request for meeting dates until November 26th, almost two weeks after the last route sales bargaining session. (Tr. 469.)

[13] Although the Union did agree to entertain the concept of net sales commissions on November 14th, the Union proposed net commission rates that were too high and that were not conditioned on an increase in sales volume. (ALJD, p. 11; Tr. 266-67, 312-13, 338-39, 349, 450-51, 453-55, 648-49.) The Union did not indicate that its proposals were "flexible," nor did it suggest that additional concessions would be considered. The Union had already twice rejected the Company's proposal to mediate, and the Union provided no dates to continue negotiations. (Tr. 189-90, 258-61, 282, 344-45, 451-52, 458-60, 464, 652; GX-32; RX-5.) In fact, Maddy stated that he saw "no point" in taking the Company's proposal to the membership and that the parties were "just spinning their wheels." (Tr. 448.)

[14] The mere fact that Mike-sell's may have made some post-implementation movement on certain proposals does not mean that the Company foresaw any room for further movement on November 14th (or at any time prior to implementation). (Tr. 462.) Indeed, bargaining impasses are always broken at some point, and unilateral implementation may help break an impasse. The mere fact that movement by the parties may occur after implementation does not mean there was any less of an impasse prior to that movement.

easily distinguishable. While the General Counsel vaguely asserts that Mike-sell's "does nothing more than 'cherry-pick' facts [in *Newcor* and *CBC Industries*] that are immaterial to the instant case" (GC Brief, p. 5), its Answering Brief does absolutely nothing to refute the huge factual distinctions between those cases and this situation.

In *Newcor*, the employer expressly announced that the contract expiration date was the "deadline" for signing a new contract and, unlike Mike-sell's, did not seek the help of a federal mediator. *Newcor,* 345 NLRB 1229, 1234, 1239-40. The *Newcor* union never delayed negotiations by cancelling sessions or instigating a bargaining "hiatus," although the employer had cancelled a meeting. *Id.* at 1241. On the day before the contract expired, the employer broke off negotiations at 7:00 p.m. and announced impasse, despite the fact that the parties historically bargained until at least midnight. *Id.* at 1235-36. The union requested to continue bargaining into the night and expressly emphasized that it was willing to further compromise on any subject—specifically healthcare and wages—but that it needed additional information to meaningfully analyze the employer's proposals. *Id.* at 1234-35, 1238. The employer refused to continue bargaining and instead implemented its final offer the next day without responding to the union's information request. *Id.* at 1234-36, 1239-42.

In *CBC Industries*, the employer never explained that economic necessity required greater speed in negotiations, never announced that the parties had reached an impasse or deadlock, never identified any proposal as its "last, best, and final offer," and never informed the union of its intent to unilaterally implement any terms before doing so when the contract expired. *Id.* at 127. In fact, the parties met regularly, exchanged proposals and counter offers, and reached tentative agreement on several key economic aspects of the new contract, including a wage freeze and discontinuation of the Christmas bonus. *Id.* at 124, 127. Accordingly, the

record was "devoid of any objective evidence of a failure of the bargaining process to work as intended to narrow differences between the parties" and "devoid of any evidence that either party . . . regarded the process as taking too long, at deadlock, at impasse or that any party expressed unhappiness with the pace or progress of bargaining." *Id.* at 127.

As evidenced by the General Counsel's complete failure to reconcile these factual distinctions, the present case is far different than *Newcor* and *CBC Industries*. From the outset of negotiations, Mike-sell's voluntarily took initiative to provide the Union with a great deal of financial data to support its concessionary proposals. (Tr. 36-39, 48-50, 74-75, 97-101, 138-40, 144, 240-45, 251-52, 404-05, 435-36, 438-42; RX-4; GX-8; GX-14; GX-22.) The Union took this financial data at "face value" and did not ask for additional information. (Tr. 242.) Mike-sell's tried unsuccessfully to schedule additional bargaining sessions and twice attempted to enlist the help of a federal mediator, whereas the Union cancelled at least two meetings, delayed in providing dates for bargaining, and twice refused to participate in mediation. (Tr. 136, 189-90, 258-62, 412, 458-60, 468-69; GX-32; RX-5.) At the last pre-implementation bargaining session, the Union ended the meeting by admitting that the parties had not "moved the ball very far" and declined to provide any more dates until some unidentified point in the future (which did not occur until almost two weeks later on November 26th). (ALJD, p. 12; Tr. 189-90, 342, 412, 456-57, 468-69, 657-58; RX-5.) And as explained previously, unlike in *Newcor* and *CBC Industries*, the Union neither stated nor implied that it was willing to further compromise its position, and the parties had not reached tentative agreements on any of the three key issues. (Tr. 460-64.) Accordingly, the ALJ's reliance on *Newcor* and *CBC Industries* is misplaced.

Moreover, while Mike-sell's did emphasize its unwillingness to extend the route sales contract, contrary to the ALJ's finding based on *Newcor*, this announcement did not equate to an

"artificial" or "arbitrary" deadline for negotiations. (ALJD, pp. 17, 19.) The Company never stated nor implied any particular course of action beyond its general unwillingness to extend the terms of the expired agreement, as it was impossible to do so. Mike-sell's understood that the parties might not reach an agreement by the time the route sales contract expired. In such case, the Company's options would depend on whether the parties were at impasse. If the parties were not at impasse, then Mike-sell's would be required to continue to tolerate the Union's delay tactics. If the parties were at impasse, then Mike-sell's would be prepared for an implementation or a lockout. The ALJ's Decision reflects an improper assumption of fact that, from the very beginning, Mike-sell's intended to implement whatever offer it had on the table when the route sales agreement expired, regardless of the existence or absence of an impasse. This improper assumption of fact contributed to the ALJ's incorrect conclusions of law. (ALJD, pp. 17-19.)

D. The Answering Briefs fail to rebut the Company's argument that the ALJ erred in admitting evidence about post-implementation bargaining sessions.

Despite their adamant insistence that evidence of post-implementation bargaining be admitted at the hearing before the ALJ, neither the General Counsel nor the Union even bothered to mention this post-implementation evidence in their Answering Briefs. Nor do they bother to refute the Company's exceptions to the ALJ's improper admission of this post-implementation evidence. The most logical explanation of why such initially-vocal proponents of irrelevant (and unduly prejudicial) evidence have suddenly become silent and indifferent is the old adage "you cannot 'unring' the bell."

Mike-sell's has consistently maintained that the parties' post-implementation bargaining sessions are irrelevant to whether an impasse existed on November 19th. The mere fact that negotiations continue does not mean that an impasse does not exist. *See, e.g., Hi-Way,* 206 NLRB 22, 23 (1973). When an impasse in bargaining is reached, the duty to bargain is not

terminated but only suspended. *Id.* Impasse, in effect, temporarily suspends the usual rules of collective bargaining by permitting the interjection of new terms and conditions into the employment relationship even though no agreement was reached through negotiations. *Id.* The impasse doctrine is designed, in part, to allow an employer to exert unilateral economic force by establishing new terms and conditions of employment as set out in the employer's proposals. *Id.*; *see also McClatchy Newspapers, Inc.*, 321 NLRB 1386, 1389-92 (1996). In short, unilateral implementation of an employer's last, best, and final offer is a lawful (and often successful) method for breaking an impasse. *Id.*

It was improper for the ALJ to admit evidence of the parties' post-implementation bargaining sessions. Mike-sell's vehemently objected to the introduction of such prejudicial evidence during the hearing in this matter. (ALJD, p. 19; Tr. 15-17, 202-05, 221-23.) The Union's sudden willingness to meet and make slow movement after the labor agreement expired, and after Mike-sell's had implemented the terms of its Final Offers—as well as to raise new issues to quibble over for the first time—is not evidence that the parties were not at impasse on November 19th. If post-implementation bargaining concessions were probative of whether an impasse existed, then a union would always be able to invalidate an employer's unilateral implementation by waiting until after implementation to make serious movement on key issues. Instead, the Union's post-implementation concessions support a finding of an impasse on November 19th and further demonstrate that, since that impasse and implementation, the Union has tried desperately to show some movement (however superficial) between the parties at each juncture in order to support its unfair labor practice charges.

Not only did the ALJ improperly admit evidence of post-implementation bargaining, but as explained in the Company's Supporting Brief, the ALJ also failed to consider all of that

evidence. (Supporting Brief, pp. 29-30.) The only post-implementation evidence that the ALJ focused on was the parties' December 5th bargaining session—the same evidence that the General Counsel discussed in detail at the hearing, but has since abandoned as apparently unnecessary to its argument after "the bell has been rung." (ALJD, p. 19 at fn.25.) Because it appears undisputed that the ALJ acted improperly in admitting evidence of the parties' post-implementation bargaining sessions, the Company's exceptions on that point should be sustained, and the ALJ's Decision must be justified only by evidence of pre-implementation events in the record.

III. CONCLUSION

For the reasons stated above, as well as in the Company's Supporting Brief, the Company's exceptions should be granted, the ALJ's ruling should be reversed, and the General Counsel's Complaint should be dismissed because (A) the record as a whole does contain a preponderance of evidence that the parties were at impasse on November 19th; (B) the ALJ did err in admitting evidence about post-implementation bargaining; and as a result, (C) the record as a whole does not contain a preponderance of evidence to support the ALJ's credibility assessments, factual findings, conclusions of law, remedy, and order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2013, Consolidated Reply Brief of Respondent Mike-sell's Potato Chip Company in Support of Its Exceptions to the Decision of Administrative Law Judge Geoffrey Carter was electronically filed through the National Labor Relations Board website (www.nlrb.gov), with copies sent to the following in the manner described below:

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