

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

ANHEUSER-BUSCH, LLC,)
)
Respondent, and)
)
MATTHEW C. BROWN, an individual,)
)
Charging Party, and)
)
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL 947 AND)
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, BREWERY, AND SOFT)
DRINK WORKERS CONFERENCE,)
)
Parties in Interest.)

Case 12-CA-094114

**EXCEPTIONS OF RESPONDENT ANHEUSER-BUSCH, LLC
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Board’s Rules and Regulations, Anheuser-Busch, LLC (herein after “Anheuser-Busch” or “Respondent”), by and through the undersigned counsel, files exceptions to the September 10, 2013 Decision of the Administrative Law Judge (“ALJ”)¹ in the above captioned matter as follows.

1. The ALJ misinterpreted and misapplied the law when he applied the broad definition of “employee” contained in the first part of Section 2(3) of the Act that is applied to 8(a)(3) and 8(a)(4) cases, rather than the narrow definition of employee in the latter part of Section 2(3) of the Act that is applied to 8(a)(5) charges and which focuses on an employee’s bargaining unit status. (ALJD Pages 8 and 10).

¹ Respondent also excepts to the ALJ’s recommended Order that Respondent post a NOTICE corresponding to any matters addressed in these exceptions.

2. The ALJ erred when he concluded that the Charging Party remained an employee under Section 2(3) of the Act two years after his termination from employment was upheld by an arbitration panel. (ALJD Pages 8 and 9).

3. The ALJ erred when he found that the Charging Party remained an employee covered by the Act after his termination because he was "pursuing his employment status" in federal court in a discrimination lawsuit, thereby expanding the definition of employee under Section 2(3) of the Act. (ALJD Page 9).

4. The ALJ erred when he found that the Charging Party is still a bargaining unit employee. (ALJD Page 10).

5. The ALJ failed to follow existing Board law when he found that pursuing an individual lawsuit is protected concerted activity under Section 7 of the Act that keeps an individual's employment status alive.

6. The ALJ erred when he applied the Utility Vault Co. case to the facts of this case. (ALJD Page 9).

7. The ALJ erred when he concluded that Charging Party was an employee at the time he applied for employment with Respondent. (ALJD Pages 8 and 10).

8. The ALJ erred when he found that requiring the Charging Party to agree to its Dispute Resolution Program Policy ("DRP") when he applied for employment, without bargaining, violated the Act because this event occurred in 2004 and is outside of the Section 10(b) period for filing a charge. (ALJD Pages 8 and 10).

9. The ALJ erred when he failed to find that the Respondent's Dispute Resolution Program Policy, as applied to former employees, does not vitally affect bargaining unit employees.

10. The ALJ erred when he recommended that the Respondent be ordered to cease and desist from "[r]equesting the District Court in Brown's Title VII lawsuit to have the matter before the District Court referred to and decided through the Company's DRP policy" because the Board lacks jurisdiction to control a reasonably-based jurisdictional issue raised in a federal court proceeding and the recommended order is unconstitutional. (ALJD Pages 10 and 11).

11. The ALJ erred when he recommended that the Respondent be ordered to cease and desist from "[u]nilaterally changing terms and conditions of employment of unit employees by applying the DRP policy to unit employees" because the Charging Party was not a bargaining unit employee when the Respondent requested the District Court to compel the Charging Party to use the DRP policy that he had agreed to use. (ALJD Pages 10 and 11).

12. The ALJ erred when he recommended that the Respondent be ordered to cease and desist from "[i]n any like or related manner [sic] interfering with restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act" because (a) no violation of Section 7 of the Act was alleged in the Complaint; and (b) under existing Board law, a lawsuit to vindicate personal rights is not considered protected concerted activity. (ALJD Page 10).

13. The ALJ erred when he recommended that the Respondent be ordered to "[f]orthwith withdraw that portion of its defense in Brown's District Court lawsuit that requests the District Court have the matter before it decided pursuant to the Company's DRP policy" because the Board lacks jurisdiction to control a reasonably-based jurisdictional issue raised in a federal court proceeding and the recommended order is unconstitutional. (ALJD Pages 10 and 11).

14. The ALJ erred when he sustained the Acting General Counsel's objections and refused to allow the Respondent to present testimonial evidence:

- a. as to whether the Local Union's Secretary-Treasurer considered a terminated employee part of the bargaining unit (Tr. 71 and 79); and
- b. as to why Respondent filed a motion to compel Charging Party to use the Dispute Resolution Procedure that Charging Party had agreed to (Tr. 97).

15. The ALJ erred when he failed to apply the Noel Canning decision to this case. (ALJD Pages 7 and 8).

16. The ALJ erred when he failed to find that the appointment of the Acting General Counsel was not in accordance with the Federal Vacancy Reform Act.

For the foregoing reasons and the reasons and arguments set forth in Respondent's Brief in Support of Exceptions to the Administrative Law Judge's Decision, Respondent respectfully requests that its exceptions be sustained and the complaint against it in this matter be dismissed.

Anheuser-Busch, LLC

By Its Attorneys

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Dated: October 24, 2013

CERTIFICATE OF SERVICE

This is to certify that the following parties have been served this 24th day of October, 2013 by electronic mail (or e-filing):

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