

**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

**Case 12-CA-094114**

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 947 AND  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, BREWERY AND SOFT  
DRINK WORKERS CONFERENCE,

Parties in Interest

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**ANSWERING BRIEF OF CHARGING PARTY MATTHEW C. BROWN  
TO THE EXCEPTIONS AND BRIEF OF RESPONDENT, AB**

Pursuant to § 102.46 of the Board's Rules and Regulations and the extension of time for filing answering brief and cross-exceptions granted by the Board on November 7, 2013, Matthew C. Brown ("Brown" or "CP"), by and through his undersigned counsel, files this restricted answering brief to the exceptions and brief filed by Respondent Anheuser-Busch, LLC ("AB"). CP gratefully acknowledges and continues to rely extensively upon the expertise and far greater experience of the General Counsel's office for briefing the issues raised by his ULP charge. However, without significantly imposing upon his finances, he would like to add his limited "two cents" worth in response to the exceptions and brief filed by AB.

The Historical 'DRP Contract' Premise of AB's Exceptions and Arguments Is Disputed

Despite AB's arguments to the contrary, whether Brown contracted or agreed with AB

(by virtue of the fine print in his employment application unnoticed by Brown) to submit any and all disputes with his future employer to its DRP is very much a disputed historical fact. Brown has extensively challenged that contention in his federal law suit<sup>1</sup> and the court has the issue under advisement. It was never an issue before the ALJ on his ULP charge.

AB's Employee-Status Arguments Contravene the NLRA's Collective-Bargaining Framework

AB's employee-status arguments would eviscerate the Union's role as the exclusive bargaining-representative as to an otherwise mandatory subject of bargaining – grievance procedures (if any) governing, *inter alia*, the statutory termination claims of union-represented employees against AB. *Litton Financial Printing Div., Litton Business Systems, Inc. v. NLRB*, 501 U.S. 190, 199, 111 S. Ct. 2215 (1991)(“[A]rrangements for arbitration of disputes are a term or condition of employment and a mandatory subject of bargaining”)

The U.S. Supreme Court has recognized and held that a union, as the exclusive-bargaining representative of unit employees, has the authority to waive their individual rights to a judicial forum and trial by jury as to statutory discrimination claims against their employer. *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 129 S. Ct. 1456 (2009)(binding arbitration provisions of CBK “clearly and unmistakably” held to apply to ADEA claims). To be sure *Penn Plaza* did not involve claims of *terminated* employees. However, the opinions contain no language suggesting that the Court would be prepared to carve out an exception for terminated employees as no longer within the union's exclusive representation *vis-a-vis* grievance procedures governing statutory claims arising from terminations. Yet, AB's non-employee arguments post-termination implicitly embrace just such an exception.

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<sup>1</sup>See GC Exh. 2 & 3, proffered but not admitted federal court memoranda of Brown.

Here, to its credit, the Union did not bargain away statutory rights of unit employees. The CBK between the Union and AB (Joint Exh. 5)(by virtue of the fact that it does not ‘clearly and unmistakably’ require resort to arbitration as the exclusive remedy for statutory discrimination claims of unit employees) effectively secures for unit employees the remedies Congress provided for pursuing such claims - a judicial forum and trial by jury. No alleged *individual* agreement to the contrary can be invoked to defeat or displace those benefits of the collective-bargaining framework and this specific agreement. *J. I. Case. Co. v. NLRB*, 321 U.S. 332, 337-338, 64 S. Ct. 576 (1944)(individual contracts no matter the circumstances of their execution or terms may not defeat, delay or waive the procedures or benefits preserved by the collective-bargaining framework).

It is undisputed that AB never gave the Union notice of its intent to apply its DRP to adverse employment actions involving unit employees or ever sought to negotiate with the union over those unilaterally adopted and enforced grievance procedures. Joint Exh. ¶ 23; ALJ Decision \* 5, lines 37-40. Union-shop employers cannot have it both ways – rights to supplant with union blessing judicial forums for resolution of statutory claims of terminated employees and, failing even to attempt to secure such blessing, rights to bypass the union entirely with respect to grievance procedures governing statutory claims of terminated employees.

Moreover, AB’s employee-status arguments shift and displace the proper focus. The bargaining subject concerns the grievance procedures governing challenged adverse employment actions, including terminations – a mandatory bargaining subject. At the time of those adverse actions, employees clearly are members of the bargaining unit and exclusively represented by the union as to grievance procedures (if any) governing those actions. The duty of AB to bargain

with the union over those procedures cannot be avoided by attempting to straddle it – allegedly negotiating a grievance procedure unilaterally with the person *before* he acquires employee status and then seeking to enforce that unilaterally-imposed grievance procedure once the person’s employee status allegedly ends.<sup>2</sup> To condone that slight of hand would allow individual hiring contracts to displace the role and products of collective-bargaining in contravention of long-established principles to the contrary. *J. I. Case, supra*, 321 U.S. at 337-338.

CP respectfully submits that for all the foregoing reasons as well as those additional reasons advanced by the General Counsel, the ALJ’s findings, conclusions and recommended order should be adopted by the Board except for also ordering that AB reimburse CP his reasonable out-of-pocket fees for responding to the DRP prong of its motion to compel arbitration in Brown’s federal court action for the reasons set forth in his limited cross-exception filed on that relief matter.

Respectfully submitted for filing this 14<sup>th</sup> day of November, 2013.

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<sup>2</sup> Although AB places emphasis on the fact that Brown’s federal complaint does not expressly request reinstatement, it acknowledges such a remedy lies within the scope of general equitable relief requested. AB Brief \*13 n.8. Moreover, even if not requested in the federal court complaint, reinstatement would still be available if Brown prevails in his federal case. Fed. R. Civ. P 54(c)

**CERTIFICATE OF FILING AND SERVICE**

I certify that the foregoing limited answering brief by Charging Party was electronically filed via [www.nlr.gov](http://www.nlr.gov) with:

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and

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