UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

FAA CONCORD H, INC. d/b/a
CONCORD HONDA

and

Cases 32-CA-066979
32-CA-070343
32-CA-072231

AUTOMOTIVE MACHINISTS LODGE
NO. 1173, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS[1]

COUNSEL FOR THE GENERAL COUNSEL'S LIMITED EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

On October 23, 2013, Administrative Law Judge Eleanor Laws (the Judge) issued her decision in the above-captioned case. In her decision, the Judge correctly concluded that Respondent violated Sections 8(a)(1) and (5) of the Act by various acts and conduct, including by maintaining and enforcing a Mandatory Arbitration Agreement which required Unit employees to resolve employment-related disputes exclusively through arbitration proceedings and by enforcing/interpreting this Agreement to preclude resolution of such disputes through class action, thereby violating the Board's ruling in *D.R. Horton,* 357 NLRB No. 184 (2012). Nevertheless, although the Judge found a violation under *D.R. Horton,* she erred by failing to also conclude that Respondent violated the Act by opposing the Unit employees' demand for class arbitration under circumstances where the Respondent also precludes employees from class legal litigation. She further erred by limiting the remedial relief necessary to remedy this violation by refusing the General Counsel's request that she order Respondent to "reimburse the unit employees and/or the Union for any litigation expenses directly related to their opposition to

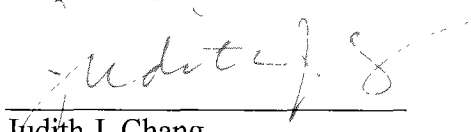
[1] The decision issued by Administrative Law Judge Laws incorrectly refers to the Charging Party as "Machinists Automotive Trades District Lodge No. 190, Automotive Machinists Lodge No. 1173," and fails to incorporate the amendment to the Complaint made during the hearing to reflect the correct name of the Charging Party as "Automotive Machinists Lodge No. 1173, International Association of Machinists and Aerospace Workers." (Tr. 8: 1-15). Counsel for the General Counsel will refer to the Charging Party by the corrected name in these limited exceptions and supporting brief.

the Respondent's unlawful motion to prohibit class arbitration." Hence, she ignored well-established case law requiring reimbursement of litigation expenses as a remedy for the filing and prosecution of an unlawful lawsuit. In so holding, the Judge incorrectly reasoned that the General Counsel's position was akin to compelling Respondent to agree to class arbitration – something which she held was not required by the Board's *D.R. Horton* decision. She also incorrectly reasoned that *D.R. Horton* should not be applied retroactively. Accordingly, pursuant to the Board's Rules and Regulations, Series 8, as amended, Section 102.46(a), Counsel for the General Counsel files the following Limited Exceptions to the Judge's narrow interpretation of *D.R. Horton*, and to the remedial portion of the Judge's decision:

1	20 22	1-12 14-16	To the Judge's narrow reading of *D.R. Horton,* finding that Respondent can lawfully preclude class-action arbitration while at the same time foreclosing the ability of employees to pursue their disputes through a class judicial forum.
2	22	23-26	To the Judge's rejection of a special remedy of reimbursement of litigation fees based on her failure to retroactively apply *D.R. Horton* and to apply the three-factor test for retroactive application of *D.R. Horton* under *SNE Enterprises*, 344 NLRB 673 (2005).
3	22	29-31	To the Judge's rejection of the special remedy of reimbursement of litigation fees expended by the Unit employees and/or the Union directly related to their opposition to Respondent's unlawful motion to prohibit class arbitration based on the Judge's incorrect conclusion that there is no Board precedent for such a remedy.

DATED AT Oakland, California this 18th day of December, 2013.

Respectfully submitted,



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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

FAA CONCORD H, INC. d/b/a CONCORD HONDA and MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190, AUTOMOTIVE MACHINISTS LODGE NO. 1173	Case(s) 32-CA-066979 32-CA-070343 32-CA-072231 Date: December 18, 2013

AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S LIMITED EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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December 18, 2013	Frances Hayden, Designated Agent of NLRB
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