

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

POLYCON INDUSTRIES, INC.

and

CASE: 13-CA-104249

**TEAMSTERS LOCAL UNION NO. 142,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

**COUNSEL FOR THE GENERAL COUNSEL'S BRIEF IN SUPPORT
OF ITS CROSS-EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION**

In his decision dated November 12, 2013, Administrative Law Judge Geoffrey Carter properly found that Respondent Polycon Industries, Inc. violated Section 8(a)(5) and (1) of the National Labor Relations Act by, on or about May 9, 2013, failing and refusing to execute a collective-bargaining agreement that embodies the terms of its May 3, 2013 agreement with Teamsters Local Union No. 142.¹

Counsel for the General Counsel (General Counsel) respectfully submits, however, that the ALJ erred by failing to find that the parties met on March 11, 2013, reached a meeting of the minds on the contract terms on this date, and that Respondent subsequently failed and refused to execute this collective-bargaining agreement that it reached with the Union. (Cross-Exceptions 1, 2 and 3). As more fully discussed below, Respondent was obligated to sign the contract it

¹ In this brief, the Administrative Law Judge will be referred to as "the ALJ"; the National Labor Relations Act will be referred to as "the Act"; the National Labor Relations Board will be referred to as "the Board"; Polycon Industries, Inc. will be referred to as "Respondent"; and Teamsters Local Union No. 142, Affiliated with the International Brotherhood of Teamsters will be referred to as "the Union or Local 142". Citations to the ALJ's Decision will be referred to as "ALJD" followed by the specific page(s) and line(s) referenced. With respect to the record developed in this case, citations to pages in the transcript will be designated as "Tr." followed by the page number. The General Counsel's exhibits will be designated as "GC"; Joint exhibits as "JT"; and Respondent's exhibits as "R" followed by the exhibit number.

reached with the Union on March 11, 2013 and any subsequent issues concerning the contract's union security clause could be bargained over pursuant to the contract's separability and saving clause ("saving clause"). Respondent conveniently waited until the parties reached a complete agreement, which was a full year after Indiana's right-to-work statute went into effect, to raise, for the first time, its concerns that the contract contained an invalid union security clause. The ALJ failed to consider the specific facts of this case, where Respondent flatly rejected the March 11, 2013 contract despite the contract's saving clause and thereafter engaged in deliberate delay to evade its legal obligation to sign the agreed upon collective bargaining agreement.

Furthermore, as more fully discussed below, the General Counsel respectfully submits that the ALJ erred with respect to two factual findings that are not reliably supported by the record evidence. Significantly, the ALJ's finding that there were 106 unit employees as of May 22, 2013 was not based on competent evidence but rather solely on a Petition filed with the Board, an administrative document, unsubstantiated by any other employer records. (ALJD p. 9, fn. 7; p. 10, lns 13-15; p. 13, lns 13-15) (Cross-Exception 4). Further, the ALJD itself contains a typographical error with respect to a date which should read March 2013 instead of March 2011. (ALJD p. 11, ln 30) (Cross-Exception 5).

Accordingly, pursuant to Section 102.46 of the Board's Rules and Regulations, the General Counsel files this Brief in Support of Cross-Exceptions to the ALJD. Based on the entire record in this matter and the arguments presented below, the General Counsel respectfully requests that its exceptions to the ALJ's Decision be granted.

I. THE EVENTS LEADING UP TO THE PARTIES MARCH 11, 2013 "MEETING OF THE MINDS" ON A FIRST CONTRACT (Cross-Exception 3)

In July 2010, Teamsters Local 142 became the exclusive bargaining representative of the production and warehouse employees at Respondent's Merrillville, Indiana facility. GC 1(e).

Initial contract negotiations began in October 2010 and dragged on for more than two years. The main negotiators for the union were Business Agents Harvey Jackson and Les Lis. Tr.19.

Respondent's primary spokesperson during negotiations was attorney Steve Johnson but Respondent's CFO and VP of Operations, Bill Hansen, also attended the bargaining sessions. Tr. 19.

During their protracted negotiations, the parties reached an initial agreement on a union security clause. JT 2, Article 1. This provision required employees to become members in good standing as a condition of employment after the 31st day of their employment. Tr. 23, 32. The parties also agreed on a saving clause. JT 6 and 7, Article 23. The saving clause states as follows:

Section 1. If any Article or Section of the Contract or of any attachments thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section would be restrained by –such tribunal pending a final determination as to its validity, the remainder of this Contract and of any attachments and shall not be affected thereby.

Section 2. In the event that any Article or Section is held invalid or enforcement thereof or compliance therewith has been restrained, as above set forth, the parties shall enter into immediate collective bargaining negotiations, upon the request of the Union for the purpose of arriving at a mutually satisfactory replacement.

JT 6 and 7.

On March 15, 2012, after the parties negotiated and agreed to the union security and saving clauses, Indiana's right-to-work statute came into effect. Tr. 23. Notwithstanding the fact that the previously negotiated union security language became effectively invalid by operation of law in early 2012, the parties did not immediately attempt to re-negotiate the union security language. Instead, the parties continued negotiations to finalize a contract and, despite Respondent's specious arguments to the contrary, they did so in early January 2013. Tr. 28; Tr. 18; JT 2.

This agreement included the agreed-upon union security clause as well as the agreed-upon saving clause. JT 2. This contract also contained a vacation provision in Article 4. JT 2. It is undisputed that the parties' actual agreement over Section 3 of the vacation provision was that full-time employees were entitled to three weeks of vacation after ten years of employment. Tr. 21. However, on January 5, 2013², the unit employees voted on and ratified a draft agreement which included an inadvertent typographical error. Specifically, the contract presented to employees at the ratification vote stated that employees got three weeks of vacation after only *three* years of employment. Tr. 20; JT 2 (emphasis added). The parties had actually agreed during bargaining that employees got three weeks of vacation after *ten* years at Respondent.

When it learned of the error in the draft presented to employees, Respondent brought it to the Union's attention and the parties subsequently met in February and again on March 11 to attempt to resolve the issue. Tr. 20. Present for this meeting were Local 142's agents Jackson and Les, as well as the Union's attorney, Paul Berkowitz and for Respondent, were Hansen and Johnson. Tr. 31. During the meeting, Respondent refused to modify the parties' agreement to include the typo. Tr. 20, 30. The parties therefore left the table on March 11³ with a mutual understanding that the actual agreement remained as the parties had agreed previously, namely, that full-time employees would be entitled to three weeks of vacation after ten years of employment. Tr. 21; JT 2 compare JT 6.

II. WHEN THE UNION REQUESTED THAT THE MARCH 11, 2013 COLLECTIVE-BARGAINING AGREEMENT BE EXECUTED, RESPONDENT UNLAWFULLY REFUSED TO SIGN THE CONTRACT (Cross-Exceptions 2 and 5)

Later on March 11, Johnson's email to Local 142 specifically requests a final copy of the

² All dates hereinafter are in 2013 unless otherwise indicated.

³ The ALJ erred in not finding that the parties had a meeting on March 11. (Cross-Exception 3). This fact is not in dispute. Significantly, after the meeting, Johnson's email to Local 142, dated March 11, begins "It was good seeing you today." JT 4.

agreement.⁴ JT 4. Significantly, by requesting a final copy of the agreement, Respondent effectively admitted that there were no remaining substantive terms to negotiate. In compliance with Respondent's request, on March 12, Local 142 forwarded Johnson a copy of the agreed-upon contract. JT 6 and 7.

Notwithstanding the fact that the parties left the table on March 11 with a final deal, Respondent was not willing to abide by its legal obligations and sign the agreement. Instead, Respondent raised, for the first time, the issue of Indiana's right-to-work law. This occurred on March 12, when Johnson sent an email to Berkowitz stating that Respondent would not sign a contract with a union security clause that was not in compliance with the law. JT 5. Despite the fact that this new issue was not raised until a year after the Indiana right-to-work statute went into effect, Local 142 promptly replied to the new issue the same day Respondent brought it up. JT 8. At that time, Local 142 sent Respondent a proposed Memorandum of Understanding to append to the already agreed-upon collective-bargaining agreement. JT 8. This fully comported with the intent of the parties given the language of the saving clause since the parties had expressly agreed that if a clause was invalid by operation of law the rest of the contract remained intact.

Again, however, Respondent delayed the process by failing to reply to Local 142 for a full week. On March 19, Johnson finally responded to Jackson by stating that Respondent would not execute a contract which "on its face" violates state law. JT 9. Johnson further acknowledged his receipt of Local 142's proposed language to append to the agreed-upon contract. JT 9. Respondent also effectively rejected Local 142's proposal by asking if the Union

⁴ The ALJ correctly found that after the parties agreed to correct the error in the contract regarding employee vacation time, Johnson emailed Local 142, on March 11, requesting a final copy of the contract. However, in the ALJD's Discussion and Analysis, the ALJ inadvertently referenced that the correction made to the contract taking place by March 2011. ALJD p. 11, ln 30. This date should be corrected to March 2013. (Cross-Exception 5).

had “better” language. JT 9. In a desperate attempt to appease Johnson’s vague request, Jackson again immediately replied to Johnson by proposing new union security language. JT 10.

However, Jackson’s repeated emails to Johnson, including the email on March 19, as well as additional emails on March 25 and April 25, were ignored by Respondent and went unanswered. JT 10.

Meanwhile, given the fact that the parties clearly had a full agreement based on the saving clause, the Union submitted the agreed-upon collective-bargaining agreement to the unit employees for ratification and it was approved on March 23. Tr. 22. The contract presented to the unit employees contained the correct vacation provision as well as the previously agreed-to union security clause and the saving clause. JT 7. Critically, it is undisputed that Local 142 notified the unit employees at the March 23 ratification vote that the union security clause would change to comply with Indiana’s right-to-work law and that any change to the union security clause provision was of no economic consequence to the unit employees. Tr. 36. Thus, the clear and undisputed message to employees was that the March 23 ratification vote was the final step to complete a binding agreement.

Thereafter, given Respondent’s failure to respond to Jackson’s repeated communications, Local 142’s attorney Paul Berkowitz became involved again. On April 30, Berkowitz sent Johnson a letter demanding that Respondent execute the written agreement. JT 12. Berkowitz argued that Respondent did not have a legal basis for refusing to sign the contract. JT 12. According to Berkowitz, the contract was agreed to and ratified, therefore Respondent could not refuse to execute it. JT 12. Berkowitz correctly asserted that pursuant to the contract’s saving clause, the parties already had an agreement and that Respondent must either accept the Union’s proposed union security clause language, or engage in negotiations over new language. JT 12.

III. ARGUMENT

Based on the foregoing mostly undisputed facts, the General Counsel excepts to the ALJ summarily dismissing, at ALJD p. 12, fn. 10, General Counsel's argument that on March 11, the parties reached a meeting of the minds on a complete and final contract and upon the Union's request for execution, Respondent violated the Act by refusing to execute this contract. Finding this earlier date as the date of the initial meeting of the minds that triggered the refusal to execute violation alleged by the General Counsel in this case merely requires a straightforward application of well-established principles.

A. APPLICABLE LEGAL STANDARDS

Section 8(d) of the Act requires the parties to a collective-bargaining relationship, once they have reached agreement on the terms of a collective-bargaining contract, to execute that contract at the request of either party. A failure to do so clearly constitutes a violation of Section 8(a)(5) of the Act. It is well-settled that an employer violates Section 8(a)(5) of the Act by refusing to sign a written contract incorporating agreed-upon terms or by otherwise repudiating an oral agreement. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 525-526 (1941). Such conduct constitutes a clear breach of the employer's bargaining obligations, because a "refusal to honor, with his signature, the agreement which he has made with a labor organization, discredits the organization, impairs the bargaining process and tends to frustrate the aim of the statute to secure industrial peace through collective bargaining." *Id.* at 526; See also *Auciello Iron Works v. NLRB*, 517 U.S. 781, 785 (1996).

The question of whether the parties reached an agreement depends on whether the parties reached a "meeting of the minds" on the terms of the draft document. *Diplomatic Envelope Corp.*, 263 NLRB 525, 535-536 (1982); *Ebon Services*, 298 NLRB 219, 223 (1990). The

existence of a collective-bargaining agreement is essentially a factual question, and it is the Board's function to determine "whether negotiations have produced a bargain which the employer has refused to sign and honor..." *NLRB v. Strong*, 393 U.S. 357, 361 (1969); See also, *North Bros. Ford*, 220 NLRB 1021, 1022 fn. 9 (1975) (Respondent was aware that union desired a written contract and any doubt it might have had was removed when charges were filed and a complaint issued alleging that its refusal to execute a contract was an unfair labor practice). Whether the parties have reached a "meeting of the minds" is determined "not by the parties' subjective inclinations, but by their intent as objectively manifested in what they said to each other." *MK-Ferguson Co.*, 296 NLRB 776 fn. 2 (1988); See also *Windward Teacher Assn.*, 346 NLRB 1148, 1150-51 (2006). If it is determined that an agreement was reached, a party's refusal to execute the agreement is a violation of the Act. See *H.J. Heinz Co.*, 311 U.S. at 526.

Moreover, the existence of a collective-bargaining agreement remains, as does the parties' obligation to execute it, even if one party discovers minor discrepancies or drafting errors in the bargained-for contract, particularly where the other party indicates a willingness to make these changes. *Fashion Furniture Mfg., Inc.*, 279 NLRB 705, 705-06 (1986). Similarly, under the facts of this case, issues as to the state law validity of a provision do not privilege a refusal to execute the agreement. *Flying Dutchman Park, Inc.*, 329 NLRB 414 (1999); *Stein Printing Co.*, 204 NLRB 17 (1973).

B. ON MARCH 11, 2013, THE PARTIES CONCLUDED NEGOTIATIONS ON ALL THE SUBSTANTIVE TERMS OF THE CONTRACT (Cross-Exception 1)

In this case, the facts surrounding the "meeting of the minds" are not in dispute. The record evidence clearly establishes that as of March 11, the parties both understood that the terms of their original agreement would not be changed and the Union simply needed to correct the typo in the contract concerning the vacation provision. Tr. 20-21. That there is any delay in

accurately reducing the terms to writing due to drafting errors does not relieve Respondent of its obligation to execute the agreement once it was in final agreed-upon form. *Fashion Furniture Mfg., Inc.*, 279 NLRB at 705-06.

During the March 11 meeting, Respondent refused to modify the agreement to include the typo. Without further discussion over any of the previously agreed upon terms of the contract, the parties left the meeting with an understanding that the typo in the contract would be fixed. Thus, on March 11, the parties had a full agreement. This fact is strongly bolstered by Respondent's own words. Specifically, after the meeting on the 11th, Johnson emailed Local 142, stating, "It was good seeing you today" and requested a "final copy" of the agreement. JT 4. There is simply no other logical explanation for Respondent to have requested a copy of the final agreement if Respondent truly expected further bargaining. See *Windward Teacher Assn.*, 346 NLRB at 1150-51 (explaining that handshakes and mutual expression of satisfaction about the successful negotiation of a contract are "hallmark indication[s] that a binding agreement has been reached at the end of negotiations").

Likewise consistent with the conclusion that the parties reached an agreement on March 11, Local 142 forwarded the agreement to Respondent on March 12. Thus, having entered into an oral agreement with Local 142 on March 11, Respondent was thereby obligated to honor the written contract incorporating the agreed-upon terms with his signature. *H.J. Heinz Co.*, 311 U.S. at 525-526.

Instead, and in direct contravention of Respondent's legal obligation, Respondent refused to sign the agreed-upon contract. Respondent attempted to excuse its conduct by raising, for the first time, that it could not sign a contract with an invalid union security clause due to Indiana's year-old right-to-work statute. JT. 5. This refusal was patently unjustified given the fact that the

agreed upon contract included a saving clause that dealt with just such a scenario. Specifically, under the agreement, the parties expressly agreed that if a clause was invalid by operation of law the rest of the contract remained intact. JT 6 and 7. To remedy an invalid provision, the agreement provides that at the request of the Union, the parties must negotiate a mutually satisfactory replacement. JT 6 and 7. Based on the agreement Respondent freely entered into, Respondent was required at that point to use the contract's mechanism to negotiate new union security clause language through the saving clause. By failing to do so, Respondent unlawfully evaded its obligation to execute the contract.

Moreover, Respondent repeatedly ignored Local 142's proposed union security language to remedy Respondent's refusal to execute the contract for over a month. JT 8, 9, 12. On April 30, the Union's attorney (Berkowitz) followed Jackson's numerous attempts to reach Respondent with a letter demanding that Respondent execute the written agreement, explaining that the contract was agreed to and ratified. JT 12. Berkowitz correctly asserted that Indiana's right-to-work status which had now been in effect for over a year was not a legal basis for the Respondent's refusal to sign the contract but rather, pursuant to the contract's saving clause, Respondent must either accept the Union's proposed union security language, or engage in negotiations over new language. JT 12.

Under the foregoing circumstances, it is clear that on March 11, the parties had a "meeting of the minds" and reached an agreement on the terms of a collective-bargaining agreement. Given this, the General Counsel respectfully requests that the Board find merit to this exception.

C. AS OF MARCH 12, 2013, AT THE UNION'S REQUEST, RESPONDENT WAS OBLIGATED TO EXECUTE THE AGREEMENT AS REACHED ON MARCH 11, 2013 (Cross-Exception 2)

The evidence also supports finding that on March 12, the Union requested that Respondent execute the contract. JT 6, 7. *North Bros. Ford*, 220 NLRB at 1022 fn. 9. Specifically, immediately following the March 11 meeting, Respondent requested a final copy of the agreement. JT 4. Local 142 forwarded Respondent a copy of the agreed-upon contract. JT 6 and 7 (The only difference between JT 6 and JT 7 is the effective date of the contract). Consistent with the conclusion that the parties reached an agreement on March 11, Local 142 forwarded the agreement to Respondent on March 12 in anticipation of its execution. Thus, Respondent violated Section 8(a)(5) of the Act by refusing, as of March 12, to sign the March 11 agreed-upon contract.⁵

The ALJ in this case did not make a finding on whether the parties reached a meeting of the minds on March 11. Instead, the ALJ bypassed this issue and incorrectly concluded that Respondent was *arguably* within its right to insist that the parties resolve the statutorily invalid union security clause prior to its execution. ALJD p. 12, fn. 10 (emphasis added). However, the Board has routinely dealt with arguments that contracts containing unlawful provisions shielded employers from allegations of an unlawful refusal to execute an agreement. *Flying Dutchman Park, Inc.*, 329 NLRB 414 (1999); *Stein Printing Co.*, 204 NLRB 17 (1973).

In *Flying Dutchman*, the Board required the employer to execute its contract excluding the disputed provision. 329 NLRB at 418. Contrary to the ALJ's limited reading of the case, *Flying Dutchman* stands for the proposition that an employer cannot evade signing a contract where the refusal to sign the contract is motivated by unlawful considerations other than the presence of an invalid union security clause. *Id.* at 416. Here, the evidence clearly demonstrates that Respondent's refusal to sign the contract terms it reached with the Union on March 11 was

⁵ Even if one were to assume, *arguendo*, that Local 142's March 12 email to Respondent was not a request to execute, there is no question that Berkowitz's April 30 letter to Respondent requested that the contract be executed. Thus, as of this date, April 30, Respondent without doubt refused to sign the March 11 agreed-upon contract.

due to reasons other than the union security clause, namely, deliberate and continued delay. Specifically, Respondent raised, for the first time, the issue of Indiana's year-old right-to-work statute only after the parties had a complete and final contract. JT 5. This refusal was patently unjustified given the fact that the agreed upon contract included a saving clause that dealt with just such scenario. Based on the agreement Respondent freely entered into, Respondent was required at that point to use the contract's mechanism to negotiate new union security clause language through the saving clause. The Union immediately responded to Respondent's concern by providing new union security language, pursuant to the saving clause, but Respondent ignored the Union's correspondence for over a month. JT 8, 9, 12. Under these circumstances, where Respondent deliberately evaded its legal obligation to sign the contract it reached with the Union and where the contract provided for a mechanism to negotiate new union security language, Respondent violated the Act by refusing to execute the agreement upon request by the Union.

Here, the Union made just such a request to execute the contract on several occasions. First, on March 12, Respondent sent the final version of the contract to the Employer thereby seeking Respondent's signature on the agreement. JT 6, 7. Second, Berkowitz's April 30 letter to Johnson demanded that Respondent execute the agreement and if it continued its refusal, the Union would file a charge with the Board. JT 12. Finally, as found by the ALJ, the Union sent Respondent a final draft of the contract on May 7, and again sought Respondent's signature on the parties' complete agreement. Yet, Respondent continued in its refusal to honor the contract as reached by the parties on March 11 despite the Union's repeated requests (March 12, April 30 and May 7) that it execute the agreement.

Moreover, In *Stein Printing*, unlike here, the employer stood willing to sign the contract without the offending provision. 204 NLRB at 23. Given the employer's willingness to execute

the contract without the suspect provision, the employer's refusal was valid. *Id.* However, in the instant case, Respondent made no such offer and therefore *Stein Printing* is unavailing for Respondent. Instead, Respondent flatly rejected signing the collective-bargaining agreement. In so doing, Respondent blatantly violated the Act as alleged in the complaint.

IV. THE ALJ INCORRECTLY RELIED ON A FILED ADMINISTRATIVE AGENCY DECERTIFICATION PETITION ("RD PETITION") TO CONCLUDE THE TOTAL NUMBER OF UNIT EMPLOYEES AT RESPONDENT'S FACILITY. (Cross-Exception 4)

In this case, the ALJ found that the continued communications after April 30 between the parties' counsel resulted in the parties having reached a meeting of the minds on May 3. ALJD p. 14, lns 11-12. The ALJ further concluded that Respondent's refusal to execute the contract as agreed to on May 3 was a violation of Section 8(a)(1) and (5) of the Act. ALJD p. 14, lns 14-16. The Respondent, in its defense at trial and in its exceptions, claims that it was not legally obligated to execute the contract because the Union lost the support of a majority of the bargaining unit employees. The ALJ correctly dismissed Respondent's defense based on a review of the sequence of events. On May 3, the parties reached an agreement regarding the only issue remaining, the union security clause. It wasn't until after the Respondent agreed to the contract terms that it questioned whether the Union lost the support of a majority of employees in the bargaining unit.

The ALJ examined whether the employee circulated decertification petition provided any validity to Respondent's contention that it was not obligated to execute the contract. ALJD p.13. While the ALJ correctly found that the employee decertification petition did not relieve Respondent of its obligation to execute the contract, the ALJ erroneously relied on a review of signatures and dates on the employee circulated petition and compared the total amount of signatures to the total number of employees as listed in a RD Petition filed with the Board nearly

three weeks later, on May 22. ALJD p. 9, fn. 7 and p. 13, lns 13-15. Specifically, the ALJ found, and the General Counsel excepts to this finding, that 106 unit employees were employed by Respondent as of May 22.

The General Counsel excepts to the ALJ's reliance on a RD Petition filed with the Board, an administrative document, to determine the total number of unit employees. In *RJR Communications, Inc.*, 248 NLRB 920, 921 (1980), the Board stated:

Courts have long recognized that hearsay evidence is admissible before administrative agencies, if rationally probative in force and if corroborated by something more than the slightest amount of other evidence. *N.L.R.B. v. Imperato Stevedoring Corporation*, 250 F.2d 297 (3d Cir. 1957). The Board jealously guards its discretion to rely on hearsay testimony in the proper circumstance. *Georgetown Associates, d/b/a Georgetown Holiday Inn*, 235 NLRB 485, fn. 1 (1978). See, generally, *Alvin J. Bart and Co., Inc.*, 236 NLRB 242 (1978).

The ALJ relied on hearsay evidence that was not corroborated by the record evidence to make a finding on the total number of employees in the unit. Here, Respondent failed to present sufficient information to permit the ALJ to make a reliable finding that there were 106 employees at any point in time, to include May 22. An RD Petition is filed with the government to initiate an investigation and the Petition is simply an initial document that aides an official investigation of a matter. The material contained on the form is only plausible or arguable. The information contained on the form is certainly not trustworthy to be relied on in drawing a conclusion to what Respondent failed to prove. The minimal record testimony on the number of employees came from employee Michael Phipps who testified that there "are fewer than 100 employees at Polycon." Tr. 54. This incredibly vague testimony falls well short of carrying Respondent's burden of establishing the necessary elements of its defense. Instead, on this record, the actual number of employees in the unit, a fact well within Respondent's control, is a complete mystery. Without this decisive information, no credible conclusion can be reached

concerning the total amount of employees at Respondent or whether the Union lost majority support at Respondent at any time. Given this, the General Counsel respectfully requests that the Board find merit to this exception.

V. CONCLUSION

For all the reasons stated above, the General Counsel respectfully requests the Board find merit to its Cross-Exceptions to the Decision of the ALJ in this case and enter an appropriate Order and Remedy for the unfair labor practice Respondent committed.

Dated at Chicago, Illinois, this 7th day of January, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE
13-CA-104249

I certify that on this 7th day of January 2013, a true and correct copy of Counsel for the General Counsel's Cross-Exceptions and Brief in Support of its Cross-Exceptions to the Administrative Law Judge's Decision were served by electronic mail upon the following parties of record:

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