

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

**MOUNTAINSIDE FARMS, a DIVISION OF  
WORCESTER CREAMERIES CORP.**

**and**

**Case 03-CA-097023**

**TEAMSTERS LOCAL UNION NO. 693**

**GENERAL COUNSEL'S ANSWERING BRIEF  
TO RESPONDENT'S EXCEPTIONS TO THE  
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46(d)(1) of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits this Answering Brief in response to Respondent's Exceptions to the Decision of the Administrative Law Judge Kenneth W. Chu (ALJ), dated November 5, 2013, in the above-captioned case.

**Respondent's Exception 1:**

Respondent excepts to the ALJ's finding that the parties were not at impasse in bargaining on September 5, 2012.<sup>1</sup> In the decision, the ALJ explained that he reached this finding because the record revealed that Respondent's May 9 last, best and final offer (LBFO) was significantly modified in Respondent's September 5 LBFO and therefore should have been subjected to further negotiations. The ALJ highlighted several of the changes from May 9 to September 5. For example, Respondent's September 5 LBFO was for a proposed two-year contract whereas the May proposal was for three years. Also, the September 5 LBFO modified the May 9 LBFO by eliminating the provision that would have reduced health benefits if

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<sup>1</sup> All dates herein are 2012 unless otherwise noted.

premiums increased by more than 10 percent. The September 5 LBFO also proposed to offset the higher deductibles by increasing Respondent's contribution to the HRA account and proposed an effective date of November 1 for the CDPHP/HRA insurance coverage, which was not in the May 9 LBFO. (GC Exh. 10 and 12).<sup>2</sup> The ALJ concluded that these changes on September 5 were significant and material changes that would require further negotiations. (ALJD at 15-18)

The ALJ also found significant movement on the part of the Union at the September 5 bargaining session. Specifically, the ALJ found that the Union credibly stated that it would be amenable to the proposed 35-cent-an-hour wage increase if it was retroactive to the expiration of the old contract, and that the Union, for the first time, was willing to consider a health insurance plan with an HRA account. The ALJ found that these verbal proposals were significant concessions on the Union's part. Moreover, the ALJ also found that the parties' understanding from their September 5 bargaining session was that there might be wiggle room on the dollar amount of the weekly contribution. (Tr. 299). Thus, the ALJ concluded that the Union was bargaining in good faith over significant issues of wages and health insurance benefits and that there was a contemporaneous understanding between the parties that further negotiations might prove fruitful. (ALJD at 15-18).

In support of its position, Respondent argues that its May 9 proposal was not a LBFO. Respondent asserts that the May 9 proposal was never designated a LBFO and that Respondent did not believe that the May 9 proposal was a LBFO. Respondent also asserts that the ALJ's

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<sup>2</sup> Throughout this brief the following references will be used: ALJD at \_\_\_, \_\_\_ for the Administrative Law Judge's Decision at page(s), line(s); GC Exh. \_\_\_ (at \_\_\_) for General Counsel's exhibit (at page number); and Tr. \_\_\_ for transcript page(s).

rationale for not finding impasse is inaccurate as Respondent's September 5 LBFO was subject to further negotiations on September 5 and October 15.

However, the record evidence shows that Respondent did not meet its burden of demonstrating the existence of an impasse. It is clear from record evidence that the main disagreements between the parties were health insurance, employees' weekly contributions and the wage increase. The record establishes that by September 5, the parties were actively negotiating and presenting various proposals. As the ALJ found, Respondent's September 5 LBFO made significant changes from its May 9 LBFO, which had not been discussed by the parties, including the new two-year contract term and the proposed new CDPHP coverage date of November 1. The record also establishes that on September 5, Respondent did not tell the Union that future negotiations would be futile. (Tr. 336).

Moreover, John Eckstein (Respondent's Corporate Controller) testified that at the May 9 bargaining session, Respondent told the Union that the parties were at impasse. (Tr. 324). As Respondent was purportedly asserting impasse on May 9, its proposal on that same date amounted to a LBFO. Regardless, the September 5 LBFO was significantly different than the May 9 proposal and Respondent was therefore obligated to afford the Union time to respond to the significant and material changes. See Atlas Refinery, Inc., 354 NLRB 1056, (2010) (finding no impasse where the employer could not show futility of additional bargaining and parties had not discussed all of employer's final offer).

**Respondent's Exception 2:**

Respondent excepts to the ALJ's finding that it violated Section 8(a)(1) and (5) of the Act, when it announced unilateral changes to the healthcare insurance of Unit employees on September 26. In the decision, the ALJ found that by announcing the new health coverage and

commencing with the enrollment of Unit employees would cause a reasonable employee to assume that on September 26, a condition of employment had changed. In support of its position, Respondent argues that signing employees up was a mere formality necessary to fully implement the health insurance on October 21.

The Board has consistently found that an announced unilateral change to a mandatory subject of bargaining is unlawful, even if it is not actually implemented, where the announcement would cause a reasonable employee to view the change as effectively implemented. In ABC Automotive Products Corp., 307 NLRB 248, 250 (1992), the Board concluded that an employer violated Section 8(a)(5) when it told striking employees that they must return to work by a certain date and that, when they returned, the employer planned to implement its final offer, under which the employer would terminate contributions to the union health fund and would provide its own health plan. The Board reasoned that, in the eyes of the employees, the unilateral change in the health plan was “effectively implemented when it was announced,” as employees would think that new health plan was in place if they were to return to work.

In the instant matter, a reasonable employee would certainly believe that the changes were effectively implemented and a done deal when presented with enrollment forms, where the new CDPHP health insurance was set to begin on November 1, not October 21. For example, employee Francis Cotton filled out his enrollment form, dated September 26, stating that his previous health insurance coverage was through Excellus effective from January 1, 2010 to October 31. (GC Exh. 32, 33).

### **Respondent's Exception 3:**

Respondent excepts to the ALJ's finding that the parties were not at impasse in bargaining on October 16. In the decision, the ALJ found that the parties were not at impasse on October 16. The ALJ's finding was based, in part, on Respondent's own statement to the NLRB during the investigation of the instant unfair labor practice charge. Specifically, on October 16, Respondent completed its Employer Application Form for the new CDPHP health insurance plan, with the effective date of November 1 and ending November 1, 2013. (GC Exh. 26). During the investigation of the charge, Respondent took the position that "Prior to this stage we were simply in an exploratory mode, not wanting to implement a unilateral change but preparing ourselves in the event impasse was reached." (ALJD at 18; GC Exh. 40, 41; Tr. 362).

Based on this statement by Respondent, the ALJ found that it was obvious that Respondent did not believe that the parties were at impasse on September 5 or even as of October 16 when it applied for the insurance. (ALJD at 18, 12-13).

In support of its position, Respondent argues that the negotiating sessions on September 5 and October 15 did not change the parties' position on the issues, nor did it provide any glimmer of hope that change was forthcoming. Therefore, in order to implement the LBFO on October 21, Respondent formalized its arrangement with CDPHP.

However, initially it should be noted that the unilaterally imposed health insurance was not effective until November 1. Also, as discussed above in Exception 1, the ALJ found significant movement by the Union on September 5 finding that the Union was amenable to the proposed 35-cent-an-hour wage increase and would consider a health insurance with an HRA account. Moreover, Respondent further admits that Unit employees would have the final decision on whether to accept or reject Respondent's LBFO. (Tr. 348). See Ead Motors Eastern

Air Devices, 346 NLRB 1060, 1064 (2006) (finding that union members' failure to ratify a proposed contract offer does not create an impasse). After receiving the September 5 LBFO, the Union held a ratification vote as employees decided whether to accept or reject the LBFO. After the membership rejected Respondent's September 5 LBFO, Respondent agreed to continue bargaining and by its October 5 letter appears to acknowledge that further negotiations could prove fruitful. (ALJD at 10; GC Exh. 14; Tr. 55).

It is clear that the contemporaneous understanding of the parties as to the state of negotiations, shows that the parties were not at impasse. There was no mention of impasse at the October 15 bargaining session and the Union stated that the parties could work something out as long as there was no increase in employees' contribution rates. The Union's professed flexibility and willingness to compromise on a critical issue establishes that the parties were not at an impasse. See Laurel Bay Health & Rehabilitation Center, 353 NLRB 232 (2008); Wayneview Care Center, 352 NLRB 1089, 1113 (2008) (finding no impasse where, after the employer proposed its last best offer, the union remained eager to return to bargaining and the parties held an additional bargaining session).

**Respondent's Exception 4:**

Respondent excepts to the ALJ's finding that the parties were not at impasse in bargaining on October 18. In the decision, the ALJ explained that he reached this finding based on the parties' communications on October 18 and 19, wherein the ALJ found that the parties expressed a willingness to continue bargaining. Thus, the ALJ concluded that he could not find that the parties were deadlocked on October 18. (ALJD at 21-24)

Specifically, the record reveals that on October 18, Dunker informed Respondent's general manager, Bachelder, that she was "meeting with the men on Saturday and proposing an

alternative agreement.” (ALJD at 20, 47-48; GC Exh. 19). Reviewing the communications between Dunker and Bachelder on October 18, the ALJ found that it showed a willingness on the part of the Respondent to look into the new proposal offered by the Union. At Dunker’s request on October 18, Bachelder agreed to schedule another round of meetings and he was hopeful that the Union’s meeting on Saturday on an alternative health insurance proposal will bring fruitful and meaningful discussions at the next bargaining session. This was followed with Bachelder’s letter of October 19 which reiterated the Respondent’s willingness to meet and discuss the proposal. (ALJD at 12, 21; GC Exh. 20)

The ALJ properly relied on Laurel Bay Health & Rehabilitation Center, 353 NLRB 232 (2008). (ALJD at 21-22) In Laurel Bay, the Board found no impasse where the union stated that it was willing to consider other health plans and that there was “wobble room” and that the union would prepare a counterproposal. The Board found that the union demonstrated its willingness to compromise and thus found that no impasse existed.

Similarly, in the instant case, the Union clearly told Respondent that it was looking at another health insurance and that the Union was meeting with Unit employees and proposing an alternative agreement. The Union was clearly showing flexibility and its willingness to compromise on the critical issue of health insurance. Moreover, the Union demonstrated its seriousness when it presented the Union’s October 24 proposal to Respondent.

In support of its position, Respondent argues that at the time of sending the October 18 email, Dunker did not have any new proposals to offer the Respondent and no new “concrete” counter-offer was mentioned at that time.

However, Respondent’s argument is not supported by the record evidence, as the Union clearly told Respondent that it was meeting with Unit employees and proposing an alternative

agreement. Also, Dunker informed Respondent's general manager, Bachelder, during an October 19 telephone conversation, that the Union was looking at another health insurance and asked Bachelder to hold off implementing anything until after her October 20 meeting with Unit employees, as they could probably work something out. (ALJD at 12, 20; Tr. 197-198).

Finally, the Board does not lightly infer the existence of an impasse, and the burden of proving it rests on the party asserting it. See Naperville Ready Mix, Inc., 329 NLRB 174, 183 (1999); Serramonte Oldsmobile, 318 NLRB 80, 97 (1995). The existence of impasse is a factual determination that depends on a variety of factors, including the contemporaneous understanding of the parties as to the state of negotiations, the good faith of the parties, the importance of the disputed issues, the parties' bargaining history, and the length of their negotiations. See Wayneview Care Center, 352 NLRB 1089, 1113 (2008); Taft Broadcasting Co., 163 NLRB 475, 478 (1967). The Board also considers the parties' demonstrated flexibility and willingness to compromise in an effort to reach agreement. See Laurel Bay Health & Rehabilitation Center, 353 NLRB 232 (2008), reaff'd. 356 NLRB No. 3 (2010), enf. denied in relevant part 666 F.3d 1365 (D.C. Cir. 2012) (finding no impasse when the union had "professed flexibility" and the employer, despite reasonable doubts regarding the union's sincerity, failed to continue bargaining); Cotter & Co., 331 NLRB 787, 789 (2000); Wycoff Steel, 303 NLRB 517, 523 (1991). The Board further takes into account whether the parties continued to meet and negotiate. See Wayneview Care Center, supra ; Ead Motors Eastern Air Devices, 346 NLRB 1060 (2006) (the union's stated intention to return to negotiations following members' rejection of employer's offer was a factor in finding that the parties were not at an impasse).

The Board considers negotiations to be in progress, and thus will find no genuine impasse to exist, until the parties are warranted in assuming that further bargaining would be futile or that

there is “no realistic possibility that continuation of discussion at that time would have been fruitful.” Cotter & Co., supra at, 787 (2000), quoting AFTRA v. NLRB, 395 F. 2d 622, 628 (D.C. Cir. 1968). The Board has consistently held that futility, not some lesser level of frustration, discouragement, or apparent gamesmanship, is necessary to establish impasse. See Grinnell Fires Protection Systems Co., 328 NLRB 585, 585 (1999). Where there is a distinct possibility of further movement on important issues, there is no impasse even if there is still a “wide gap” between the parties’ negotiating positions. Newcor Bay City, 345 NLRB 1229, 1238-1239 (2005) (the employer did not meet its burden of proving negotiations would have been futile when it did not test the union’s stated flexibility before declaring impasse). In short, the Board requires that both parties believe that they are “at the end of their rope.” Cotter & Co., supra at 788..

The Board has recognized that a bargaining stance where both sides merely maintain hard positions and each indicates to the other that it is standing pat is the rule in bargaining and not the exception. See PRC Recording Co., 280 NLRB 615, 635 (1986). Where movement between the parties indeed occurs, the Board does not confine its examination of bargaining history solely to the item claimed to be at impasse. See Sacramento Union, 291 NLRB 552 (1988). Rather, the very nature of collective bargaining presumes that while movement may be slow on some issues, a full discussion of other issues may result in agreement on stalled ones: “Bargaining does not take place in isolation and a proposal on one point serves as leverage for positions in other areas.” Patrick & Co., 248 NLRB 390, 393 (1980); Sacramento Union, 291 NLRB at 556.

#### **Respondent’s Exception 5:**

Respondent excepts to the ALJ’s finding that the Union negotiated in good faith. In support of this exception, Respondent argues that Dunker lacked sufficient bargaining authority

to carry on meaningful bargaining and that she routinely failed to communicate with union members after receiving new offers from Respondent.

In the decision, the ALJ, examining the totality of bargaining conduct, found that Dunker negotiated in good faith throughout negotiations. The ALJ found that the record shows that Dunker made clear to Respondent's bargaining committee from the beginning of negotiations that any proposal needed ratification from Unit employees. (ALJD at 23;Tr. 143, 388). Eckstein also testified that Respondent knew that Unit employees would have the final decision on whether to accept or reject Respondent's LBFO. (Tr. 348).

The ALJ also concluded that Dunker did not delay or attempt to avoid bargaining, she diligently explored other health insurance options, she met at least three times with Unit employees during negotiations and she considered and proposed to Respondent a health insurance plan with a high deductible HRA account. (ALJD at 23, 39-49). Moreover, by September 5, the parties were actively negotiating and presenting various proposals and were able to negotiate several tentative agreements. (GC Exh. 7; Tr. 34).

In support of this exception, Respondent relies on Valley Imported Cars, 203 NLRB 873 (1973). In Valley Imported Cars, the ALJ found that the employer violated the Act when it failed and refused to designate a bargaining representative with capacity and authority to conduct negotiations with the union. The employer's failure to designate a collective-bargaining representative occurred when the employer's lead representative had become incapacitated by illness for about five months. The Board has held that:

The law requires an employer to apply himself to collective bargaining sessions with the same degree of diligence and promptness as he does in his other important business interests, and his reluctance or apparent disinterest in this area or his failure to appoint an agent to negotiate fundamental issues is evidence of lack of good faith in the bargaining process.

Id. at 878.

In the instant case, Dunker clearly had the capacity and authority to conduct negotiations with Respondent. The parties engaged in meaningful bargaining and were able to negotiate several tentative agreements.

**Respondent's Exception 6:**

Respondent excepts to the ALJ's finding that the Union's offer on October 24, was a valid offer. In the decision, the ALJ explained that he reached this finding because the record revealed that although the Union's October 24 offer relating to health insurance remained with the Teamsters, the proposal had a high deductible HRA component, which was a significant change from its previous position. (ALJD at 24). The ALJ also found that although the Union did not move on the employee contribution (which it believed was negotiable), it agreed to reduce its wage rate proposal to a 35-cent-an-hour increase, which was also a material departure from its previous position for a 65-cent increase. Another factor that the ALJ considered was the Union's demonstrated flexibility and willingness to compromise on a critical issue in an effort to reach an agreement. (ALJD at 24 ); Cotter & Co., supra at 787. The ALJ found that the Union substantially changed its previous static position on the health insurance issue and proposed a high deductible HRA account insurance plan and the proposed HRA contributions were identical to Respondent's proposal. (ALJD at 24).

In support of its position, Respondent argues that the Union's October 20 counter proposal, which was not received by the Respondent until October 24, was an eleventh hour delay tactic designed to stave off implementation. Respondent argues that the Union knew that Respondent had consistently and clearly rejected the Union's Teamster plan.

However, the Union's October 20 proposal contained a new health insurance plan, Teamsters HRA (not the previous Teamsters Select Plan), which is a high deductible plan offered by the Teamsters Health and Hospital Fund. (Tr. 217). Dunker testified that this new health insurance plan is similar to Respondent's proposed CDPHP plan and contained the same HRA contribution rates as in Respondent's October 15 LBFO. (GC Exh. 21). Moreover, Dunker testified that this was the first time the employees had agreed to a high deductible plan with HRAs. (Tr. 71). Finally, there is no evidence that the Union's October 20 proposal was a delay tactic designed to stave off implementation. Rather, the Union's October 20 proposal represented significant movement by the Union in an effort to reach an agreement.

**Respondent's Exception 7:**

Respondent excepts to the ALJ's finding that even if the parties were at impasse on October 18, it was broken by the parties' oral discussion of a possible proposal from the Union. In the decision, the ALJ found that, assuming there was an impasse on October 18, it was immediately broken when Dunker spoke to Operations Manager Bachelder on the same day and communicated to him on the following day about a new health proposal. (ALJD at 25). Bachelder knew on October 18 that the Union was meeting to consider that proposal on Saturday, October 20, and that Dunker would be presenting an alternative plan to the Respondent after that meeting. ( Tr. 371). Bachelder was surprised by the Union's proposal, and his willingness to return to the bargaining table certainly created a new possibility of fruitful discussion that would break the impasse. See Laurel Bay, supra at 246. The ALJ concluded that even if Dunker did not fully articulate to Bachelder the details of the Union's insurance plan on October 18 and the Respondent did not believe the Union had changed its position, there was clearly movement to break any purported impasse. (ALJD at 26).

Anything that creates a possibility of fruitful discussion breaks an impasse (even if it does not create a likelihood of an agreement). PRC Recording Co., 280 NLRB 615, 636 (1986); Pavilions at Forrestal, 353 NLRB 540, 540 (2008). Impasse is a recurring feature in the bargaining process, which is only a temporary deadlock or hiatus in negotiations, eventually broken in almost all cases through either a change of mind or the application of economic force. Charles D. Bonanno Linen Service v. NLRB, 454 U.S. 404, 412 (1982).

In support of its position, Respondent argues that the Union made a vague request for additional bargaining sessions and that Dunker did not make a concrete offer or indicate what the Union was planning on changing at its October 20 meeting with bargaining unit employees. However, as the ALJ found, Dunker clearly told Bachelder that the Union was specifically looking at another health insurance and that Dunker would be presenting an alternative plan to Respondent after that meeting. (Tr. 197-198).

In support of this exception, Respondent also relies on the Board's decision in ACF Industries, 347 NLRB 1040 (2006). However, ACF Industries is distinguishable from the instant case. In ACF Industries, the Board found that the parties had reached an impasse, as they had engaged in extensive bargaining but still remained far apart on a number of major issues. The Board found that the employer had nothing left to offer beyond that which had already been rejected by the union, and that the union had offered no new proposals to demonstrate that further progress was possible. The Board further found that, although the union had stated that it had additional proposals, the union refused to divulge any specifics of such proposals and thus gave the employer no reason to conclude that future bargaining would have been fruitful.

Unlike ACF, in the instant case, the Union specifically informed Respondent on October 18 that it was looking at another health insurance plan and that the Union was meeting with Unit

employees on October 20 and was going to be presenting a new proposal, which ultimately was presented to Respondent on October 24. See Newcor Bay City, 345 NLRB 1229, 1238-1239 (2005) (the employer did not meet its burden of proving negotiations would have been futile when it did not test the union's stated flexibility before declaring impasse).

The Union's October 18 email to Respondent broke any impasse that may have existed because it clearly communicated that it was presenting a new proposal after the weekend meeting with the Unit employees. See Laurel Bay Health & Rehabilitation Center, 353 NLRB 232 (2008). At this point, when impasse was broken, Respondent was not free to implement terms on October 21. Thereafter, once the Respondent received the Union's counter on October 24 (a counter that represented movement on the Union's part), it nevertheless unlawfully implemented the new insurance plan on November 1, at a time when there was no valid impasse.

Respondent violated the Act by unilaterally implementing new terms in the face of the Union's clear communication to Respondent that it was going to present a new proposal, after the weekend, a communication which broke any impasse that may have existed between the parties. See Laurel Bay Health, supra.

**Respondent's Exception 8:**

Respondent excepts to the ALJ's finding that the parties were not at impasse over a single issue on October 24. In the decision, the ALJ explained that he reached this finding because the record revealed that Respondent did not reach a good faith impasse, as Respondent prematurely declared impasse on September 5, but continued to bargain. The ALJ also found that while bargaining, Respondent also unilaterally commenced the enrollment of the Unit employees under the new health insurance. (ALJD at 18-19). Respondent again continued to bargain after declaring impasse on October 18, but then agreed on the same day to resume bargaining at the

Union's request. See Calmat Co., 331 NLRB 1084, 1097 (2000). Based on this evidence, the ALJ found that Respondent had not reached a good faith impasse. The ALJ also found, and the record shows, that movement on the critical issue of health insurance was possible, given that after Respondent proposed its LBFO on October 15, Bachelder then agreed with Dunker on October 18 and 19 that Respondent would meet and continue to discuss the health insurance proposal made by the Union. The ALJ found that health insurance was a critical issue of overriding importance, but that it did not lead to a breakdown in overall negotiations. (ALJD at 26, 9-11).

In support of its position, Respondent argues that October 21 was the date that Respondent fully implemented its unilateral changes to wages and health insurance. However, the record clearly shows that health insurance was not effective until November 1. Specifically, after Dunker expressed her concerns that Unit employees would be without health insurance for the last 10 days in October, Bachelder explained that “[s]tarting on November 1st, the employees will be covered under the health insurance plan that was outlined in our last, best and final offer.” (GC Exh. 17, 24; Tr. 75).

Respondent also argues that once Respondent heard about the potential for a new counterproposal from the Union, Bachelder informed Dunker that the parties were still at impasse and that a new proposal would not change that fact.

The Board has consistently held, however, that although a good-faith impasse temporarily suspends the duty to bargain, the parties are not permanently relieved of their bargaining obligation: “As a recurring feature in the bargaining process, impasse is only a temporary deadlock or hiatus in negotiations which, in almost all cases is eventually broken,

either through a change of mind or the application of economic force.” Charles D. Bonnano  
Linen Serv. v. NLRB, 454 U.S. at 412.

In addition, “[a]n impasse does not destroy the collective-bargaining relationship. Instead, a genuine impasse merely suspends the duty to bargain over the subject matter of the impasse until changes in circumstances indicate that an agreement may be possible. Anything that creates a new possibility of fruitful discussion breaks an impasse and revives an employer's obligation to bargain over the subject of the impasse.” Pavilions at Forrestal, 353 NLRB at 540. This also includes informal discussions that are “something less than negotiations.” Comau, Inc., 356 NLRB No. 21, slip op. at 9, n. 20 (2010). See also Hotel Bel-Air, 358 NLRB No. 152 (2012).

**Respondent’s Exception 9:**

Respondent excepts to the ALJ’s finding that it violated Section 8(a)(1) and (5) of the Act, when the parties were not at impasse prior to Respondent’s unilaterally implementing changes in its health insurance coverage on October 21 and November 1. In the decision, the ALJ found, based on the Taft factors, that both sides had realistic possibilities that further negotiations might be fruitful and that neither part was “at the end of their rope,” as the Board requires for a finding of an impasse. See Taft Broadcasting Co., 163 NLRB 475, 478 (1967). Respondent failed to demonstrate that it was at the “end of its rope.” Further, even assuming arguendo, that Respondent demonstrated it was unwilling to compromise any further, the evidence establishes that it failed to demonstrate that the Union was unwilling to do so. See Grinnell Fire Protection Systems Co., 328 NLRB 585, 586 (1999). It is not sufficient for a finding of impasse to simply show that Respondent had lost patience with the Union. Impasse requires a deadlock. When additional negotiating sessions are scheduled, the parties obviously

believe that productive negotiations are possible. See Laurel Bay Health & Rehabilitation Center, supra (agreements to further meetings militates against a finding of impasse).

**Respondent's Exceptions 10-13:**

Respondent excepts to the ALJ's conclusions of law, remedy, order and notice to employees. Respondent's general Exceptions fail to state specifically what findings or conclusions that Respondent excepts to, contrary to Section 102.46(b)(1) of the Board's Rules and Regulations. As these Exceptions do not comply with the foregoing requirements, it is urged that the Board disregard them. See Section 102.46(b) (2) of the Board's Rules and Regulations; Fuqua Homes (Ohio), Inc., 211 NLRB 399, 400 n.9 (1974).

**WHEREFORE**, for all the reasons set forth above, Counsel for the General Counsel respectfully requests that the Board deny Respondent's Exceptions to the Decision of the Administrative Law Judge.

**DATED** at Albany, New York, this 16th day of January, 2014.

Respectfully submitted,

/s/ Greg Lehmann

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## STATEMENT OF SERVICE

I hereby certify that on January 16, 2014, I electronically filed the General Counsel's Answering Brief to Respondent's Exceptions to the Decision of the Administrative Law Judge in Case 03-CA-097023, to the Executive Secretary of the National Labor Relations Board using the NLRB E-Filing System, and I hereby certify that I provided copies of the same documents via electronic mail (e-mail) to Brian Carroll, legal representative for Mountainside Farms, a Division of Worcester Creameries Corp., and Kenneth Wagner, counsel for Teamsters Local Union No. 693.

**DATED** at Albany, New York this 16th day of January, 2014.

Respectfully submitted,

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