

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

MIDWEST TERMINALS OF	:	
TOLEDO INTERNATIONAL, INC.	:	
	:	Cases 8-CA-38092
Respondent,	:	8-CA-38581
	:	8-CA-38627
and	:	8-CA-63901
	:	8-CA-73735
MIGUEL RIZO, JR.,	:	8-CA-92746
OTIS BROWN	:	8-CA-97760
MARK ANTHONY LOCKETT, SR.	:	8-CA-98016
	:	
and	:	
	:	
LOCAL 1982, INTERNATIONAL	:	
LONGSHOREMEN'S ASSOCIATION, AFL-CIO	:	

**RESPONDENT MIDWEST TERMINALS OF TOLEDO INTERNATIONAL, INC.'S
ANSWERING BRIEF TO THE GENERAL COUNSEL'S EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE CARISSIMI'S DECISION**

Submitted By:
Ronald L. Mason (0030110)
Aaron T. Tulencik (0073049)
Mason Law Firm Co., L.P.A.
425 Metro Place North, Suite 620
Dublin, Ohio 43017
t: 614.734.9450
f: 614.734.9451
rmason@maslawfirm.com
atulencik@maslawfirm.com

*Counsel for Respondent,
Midwest Terminals of Toledo International, Inc.*

TABLE OF CONTENTS

I.	Introduction	1
II.	The Company Did Not Refuse To Hire Otis Brown, Lester Corggens, Lavern Jones, Ricardo Canales, Fred Victorian Jr., Don Russell and Clifford Anderson	1
A.	Hiring Process/Order of Call	2
B.	The Company Did Not Have Enough Available Work to Consistently Hire Men from the Regular List During the Time Period of April 1, 2009 through May 13, 2009	4
III.	The Company and the Union Did Not Reach An Agreement on All the Substantive Terms of A Complete Agreement	8
A.	Bargaining for Successor Contract	9
B.	The Company and the Union Did not Reach a Meeting of the Minds	19
1.	December 8, 2011	20
2.	December 9, 2011	21
3.	Board precedent does not support General Counsel's contention that the parties had the requisite meeting of the minds	24
IV.	Conclusion	27

TABLE OF AUTHORITIES

Cases

<i>Hempstead Park Nursing Home</i> , 341 NLRB 321 (2004)	24
<i>H.J. Heinz Co. v. NLRB</i> , 311 U.S. 514 (1941)	24
<i>International Automated Machines</i> , 285 NLRB 1122 (1987), enfd. 861 F.2d 720 (6th Cir. 1988)	19
<i>Windward Teachers Assn.</i> , 346 NLRB 1148 (2006.)	9, 24, 25-26
<i>Young Women's Christian Assn.</i> , 349 NLRB 762 (2007)	26-27

I. INTRODUCTION

Contrary to Counsel for the General Counsel's ("General Counsel") assertions otherwise, Administrative Law Judge Carissimi ("ALJ Carissimi") did not error in finding that Respondent Midwest Terminals of Toledo International, Inc. ("Respondent," "MWTTI" or the "Company") did not violate Sections 8(a)(1), (3), (4) of the Act because General Counsel did not establish by a preponderance of the evidence that MWTTI refused to hire the employees named in paragraph 9(C) of the First Complaint from April 1, 2009 to May 15, 2009. See, *Midwest Terminals Toledo International, Inc. and Brown, Rizo Jr., Lockett, Sr. and Local 1982, International Longshoremen's Association, AFL-CIO*, JD-80-13, November 12, 2013 ("Decision"), p. 17. As such, ALJ Carissimi properly dismissed this allegation. *Id.*

Additionally, ALJ Carissimi did not error in finding that the Company did not refuse to execute an agreed upon collective bargaining agreement in violation Section 8(a)(5) and (1) of the Act because the General Counsel failed to establish that the parties reached an agreement on all substantive terms of a complete collective bargaining agreement which the Company then refused to sign. *Id.* at pp. 30 & 33. Accordingly, ALJ Carissimi properly dismissed this allegation. *Id.*, p. 33.

II. THE COMPANY DID NOT REFUSE TO HIRE OTIS BROWN, LESTER CORGGENS, LAVERN JONES, RICARDO CANALES, FRED VICTORIAN JR., DON RUSSELL AND CLIFFORD ANDERSON

General Counsel contends that the Company refused to hire and/or employ Otis Brown ("Brown"), Lester Corggens ("Corggens"), Laverne Jones ("L. Jones), Ricardo Canales ("Canales"), Joe Victorian Jr. ("Victorian Jr."), Don Russell ("Russell) and Clifford Anderson ("Anderson") from April 1, 2009 through May 13, 2009, because Miguel Rizo, Jr., ("Rizo Jr.") Brown, Mario Rizo ("M. Rizo"), Prentis Hubbard ("Hubbard") and Tony Boyd ("Boyd") filed

contractual grievances, unfair labor practice charges (“ulp charges”) and engaged in other protected concerted activities and, as such, violated Section 8(a)(1), (3) and (4) of the Act. Excluding Brown, General Counsel seeks backpay for individuals near the top of the regular list based upon contractual grievances, ulp charges and other protected concerted activities of individuals on the bottom of the regular list and, in Boyd’s case, someone who was unavailable for work due to injury. General Counsel’s theory is misguided.

Specifically, General Counsel maintains that the Company worked favored employees voluminous hours in order to avoid assigning work to those individuals who had filed grievances and ulp charges. (General Counsel’s Post Hearing Brief, p. 29.) On the one hand, General Counsel maintains that the Company had to “punish many employees [Brown, Corggens, Jones, Canales, Victorian Jr., Russell and Anderson] to avoid providing work opportunities to those few [Rizo, Jr., Brown, M. Rizo, Hubbard and Boyd] who had actively engaged in Section 7 and charge-filing activities.” (General Counsel’s Exceptions, p. 7.) On the other hand, General Counsel claims that it was the Company’s “disdain for Brown [, Rizo Jr., M. Rizo, Hubbard and Boyd] that led Respondent to infrequently employ [Brown Corggens, Jones, Canales, Victorian Jr., Russell and Anderson].” *Id.* General Counsel’s allegations are unreasonable and its reasoning is irrational.

A. Hiring Process/Order of Call

MWTTI does not employ a regular workforce per se. (Tr. 779.) The Company hires workers on a day to day basis. (*Id.*) The workers are separated into two different categories, a skilled list and a regular list. (*Id.*) The skilled list is comprised of a core group of individuals who are qualified to run multiple pieces of equipment and/or certain positions. (*Id.*) The Company uses an Order of Call to assign the work. (Tr. 783.) The Order of Call is comprised of

the men on the skilled list, the regular list and casual/new hire list. (Id.) The Order of Call is put together each year based upon who performed work the year prior. (Id.) The Company is required to send this list to the union to make sure there are no discrepancies in the hours worked by each employee the previous year. (Id.) Once the Order of Call is agreed upon by both the union and the Company, the list is used to hire the men on a day to day basis. (Id.)

The amount of work available determines whether individuals from the skilled list and the regular list will be needed. If there is only work available for the skilled men the Company will instruct the men on the skilled list to report to work. (Tr. 779.) If the amount of work available is going to necessitate the hiring of workers beyond those persons on the skilled list, the Company will notify the men on the regular list via telephone tape that work is available. (Id.) MWTTI will then conduct a shape-up at 7:30 a.m. the following morning to hire employees from the regular list. (Id. & 781-782.) Generally speaking, hiring is based both upon qualifications and seniority. (Tr. 909.)

For instance, if the Company were manning a job to load/unload a vessel the process would be as follows:

- (1) the available jobs are posted on a large board;
- (2) the Company will assign the skilled men the jobs they are qualified to perform (either a piece of equipment or certain duties they would have on that particular day)
- (3) the Company will then assign regular employees jobs for which they are qualified or put X's on the board and then the men from the regular list select jobs for which they are qualified to perform.

(Tr. 782.)

Being atop the regular list does not guarantee employment when the amount of work necessitates that men from the regular list be hired. (Tr. 784.) For example, MWTTI may need to hire a forklift operator from the regular list. If the first person on the regular list is not a qualified forklift operator the Company will go down the list and assign the most senior person who is a qualified forklift operator, even if that person should happen to be the tenth person listed on the regular list. (Id.) Conversely, if there are two positions open and three people from the regular are qualified for that particular job, the two most senior men (based upon the hours worked the previous year) would be assigned to those positions. (Tr. 911.)

Employees on the regular list can also choose not to work, even if they are given the opportunity to do so. (Tr. 784.) For instance, said person may show up for the shape-up in order to see what is going on and will pass up the opportunity to work due to another job and/or other planned activities for the day. (Tr. 784-785.) Additionally, some may take a calculated risk and pass up work assigned to them during the morning shape-up, in the hopes of getting called back on the evening night crew if the Company determines it will have to work into the late evening hours. (Tr. 785.) This decision is based upon money as anyone working night hours would be paid time and half.¹ (Id.)

B. The Company Did Not Have Enough Available Work to Consistently Hire Men from the Regular List During the Time Period of April 1, 2009 through May 13, 2009

On April 29, 2009, Miguel Rizo, Sr. (“Rizo, Sr.”), the union steward at that time, filed a grievance against Tim Jones (“Jones”), the Company’s then Vice President of Operations alleging discriminatory hiring practices. (G.C. 2.) Specifically, Rizo, Sr. maintained that Jones

¹ Work performed from 6:00 p.m. through the start of the next day’s shift would be considered night hours. (Tr. 785.)

told him we was not going to hire people from the regular list because the men at the top of the list had either filed grievances, ulp charges and/or lawsuits against the Company. (Tr. 185-186 & G.C. 2). However, Rizo, Sr.'s testimony is simply not accurate. The only person at the top of the regular list who had filed grievances and/or ulp charges against the Company was Brown, and he had also filed charges against his union. (Tr. 341, 388, R. 94-95, 97-99 & G.C. 31 and 67(a).) The remaining workers who had filed grievances and/or ulp charges against the Company (Hubbard, M. Rizo, Rizo, Jr. and Boyd) were either near the bottom of the regular list or, in Boyd's case, unavailable for work due to injury. (R. 70, 94-95, 97-99 & G.C. 5, 9, 13, 16, 19, 31, 62.) The Company responded to the grievance as follows:

1. In response to Mr. Miguel Rizo (Steward) grievance submitted.
2. The company's official position is that the company would prefer nothing more than to hire the entire regular employee list back to work as soon as the business climate improves and the workload dictates the necessity.
3. The company stresses that we are hiring only the skilled list employees because that is all that is necessary based on the workload. In conversation you are reminded that you agreed in concept that hiring anymore employees above the present workload would not increase productivity. The company is committed and will follow the present contract stipulations. The contact [sic] states the after the company has exhausted the skilled employee list additional available work is bid on by those employees on the regular employee list with qualifications and seniority to do the work as it is made available. In fact, the company did hire men from the regular employee list in accordance with the contract for the M/V AMELIA DESGAGNES on 08 April 2009.
4. There remains a need for a critically important open dialog between the company and the union via steward during this difficult business climate which has been challenged by a change in union leadership and other mitigating circumstances. Therefore in the interest of maintaining a solid and productive working relationship both the company and the union must exercise tempered and deliberate communications.
5. On occasion it is possible that comments can be taken out context or interrupted [sic] incorrectly. The company believes that your particular grievance was discussed and explained in concert with the comments above. Again,

company's official position is that company would prefer nothing more than to hire the entire regular employee list back to work as soon as the business climate improves and the workload dictates the necessity.

(G.C. 3.)

The Company did not refuse to hire men from the regular list because certain individuals had filed grievances and/or ulp charges against the Company. Rather, as indicated above, there was simply not enough work available in 2009 because the Company suffered a dramatic reduction in work as compared to 2008 due to the economic collapse. (Tr. 811.) The Tonnage Reports, Seaport Statistics, the Toledo Blade article and the Vessel Logs clearly illustrate this point. (R. 73-77.) As ALJ Carissimi noted, significantly fewer ships came into Company's dock and entire Port of Toledo in 2009 as compared to 2008. (Decision, p. 20.) Specifically, the Vessel Log for 2009 indicates 29 vessels came to the Company's docks from January 2009 through July 25, 2009. (R. 74.) During that same period of time in 2008, 76 vessels came to the Company's docks. (R. 73.) Additionally, the Seaport Statistics compiled by the Port Authority illustrates that the number of commodities and vessels decreased (save for extremely limited exceptions) on yearly basis from 2006 through 2009, especially from 2008 to 2009. (R. 75.) Even the Toledo Blade recognized that the cargo coming into the Port had dropped significantly. (Tr. p. 830 & R. 72.) In fact, the economy was so bad that the Company was forced to lay off some of its management personnel, including Jones. (Tr. 830-831 & R. 71.)

Notwithstanding, when work was available the Company did hire men from the regular list. (Tr. 878-889, R.79-82, & G.C. 47, 49.) The Company was merely "assign[ing] work consistent with the contract and past practice[.]" (Decision, p. 21.) For instance, on April 8, 2009, Brown and Corrgens worked four (4) hours on the Amelia Desagnes (Pig Iron Vessel). (G.C. 47(H) & R. 82, p. 2.) On April 21, 22, and 23, 2009, Canales worked a total 43.5 hours

on the Barbara Andrie. (G.C. 47(Z).) On April 29, 2009, Brown, Canales and Victorian, Jr. each worked four (4) hours on the Federal Rhine. (R. 80, 82, p. 3 & G.C. 47(ee).) On May 2, 2009, Victorian Jr. was paid for twenty-seven (27) hours of work on the Barbara Andrie. (G.C. 49(I).) He was also paid another eight (8) hours for work performed on the Federal Rhine. (R. 79 & G.C. 49(D).) On May 3, 2009, Victorian, Jr. worked another 9.25 hours on the Barbara Andrie. (R. 81 & G.C. 49 (F).) On May 4, 2009, Brown, Corrgens and L. Jones worked eight (8) hours. (R. 82, p. 4 & G.C. 49(K).) On May 5, 2009 Brown, Corrgens, L. Jones, and Canales worked nine (9) hours. (R. 82, p. 4 & G.C. 49(L).) On May 6, 2009, Brown, Corrgens, and Canales worked nine (9) hours. (R. 82, p. 4 & G.C. 49(M).) On May 7, 2009, Brown, Corrgens, and Canales worked nine (9) hours. (R. 82, p. 4 & G.C. 49(N).) On May 8, 2009, Brown, Corrgens, L. Jones, and Canales worked nine (9) hours. (R. 82, p. 4 & G.C. 49(P).) On May 9, 2009 Brown and Corrgens worked 8 hours. (R. 82, p. 4 & G.C. 49(R), (T).) On May 11, 2009, Brown, Corrgens, Canales and Victorian Jr., worked ten (10) hours and L. Jones worked nine (9) hours. (R. 82, p. 5 & G.C. 49(W).) On May 12, 2009, Brown, Corrgens and L. Jones worked ten (10) hours. (R. 82, p. 5 & G.C. 49(X).)

In addition to the work noted above, General Counsel maintains that aluminum was coming in by truck during this time period (Winter 2009). (Tr. 184, 191-192 & 224.) There was aluminum on the waterside of the dock during the months of December 2008 and January, February and March of 2009. (Tr. 929-930.) Metro, one of the Company's larger customers, asked the Company to obtain another London Metal Exchange warehouse. (Tr. 930.) The Company obliged and asked the union leadership if they were interested in the work as it would

keep some of the men busy during the winter months (normal layoff period).² (Tr. 778 and 930.) The Company had to put salamanders on the aluminum to keep it hot so the men could write the warrant numbers on it. (Tr. 896 & 931.) The warranting was supposed to be completed by April. (Tr. 931.) Thus, in all likelihood, it was probably completed by April and/or the first of May. (Tr. 237-238 & 931.) Importantly, Rizo, Sr., testified that this work was being performed by employees on the skilled list. (Tr. 185 & G.C. 47 & 49.)

In light of the above, it is clear that the Company would have made the same work assignments in the absence of the protected activities outlined above. As such, the record evidence presented by both the General Counsel and the Company established a valid defense under *Wright Line*. Accordingly, the Board should affirm ALJ Carissimi's rulings, findings and conclusions set forth in his Decision with respect to this Complaint allegation.

III. THE COMPANY AND THE UNION DID NOT REACH AN AGREEMENT ON ALL THE SUBSTANTIVE TERMS OF A COMPLETE AGREEMENT

General Counsel asserts ALJ Carissimi erred in finding that the parties did not reach an agreement on all the substantive terms of a complete agreement. (General Counsel's Exceptions, p. 12.) Rather, General Counsel asserts the "meeting of the minds" occurred via e-mail on the evening of December 8, 2011. (Id., p. 15.) General Counsel's assertions are not accurate. General Counsel failed to establish that the parties had the requisite meeting of the minds on the agreement and that the document which the Company refused to execute accurately reflected the agreement. See, *Windward Teachers Assn.*, 346 NLRB 1148, 1150 (2006.)

² The Company operates the port year round even though the St Lawrence Seaway is generally shut down from late December through early April. (Tr. 778.) During this time period bulk commodities are going in and out of the port via rail and truck. (Id.) Any work being performed by Local 1982 during this time would be by those employees on the skilled work list. (Id.) The amount of employees on the skilled list needed to perform work during this time period is dependent upon the amount of work available, i.e., the demand for bulk commodities. (Id.)

A. Bargaining For Successor Contract

The Company and the union were parties to a collective bargaining agreement. (“CBA”) (Jt. 1.) The parties began bargaining for a successor contract in September 2011. (Tr. 430, 690-691 & 859.) The Company’s negotiation team consisted of Chris Blakely³ (“Blakely”) and Terry Leach⁴ (“Leach”). (Tr. 430, 690 & 858.) Blakely has extensive experience negotiating contracts. Blakely was a school teacher for thirty five (35) years before coming to work at MWTTI. (Tr. 671.) He was a member of four (4) different unions during this time. (Id.) He was president of the union approximately ten (10) times, Treasurer for approximately 12-13 years and was also the building representative. (Id.) During the last ten (10) years at Maumee City Schools, Blakely was the chief negotiator and successfully negotiated four successor contracts during that time period. (Tr. 672.) The union’s committee consisted of John Baker, Jr. (“Baker, Jr.), President, ILA Great Lakes District Council, Vice President, Atlantic Coast District and co-trustee of Local 1982 (during contract negotiations) Andre Joseph (“Joseph”), Vice President, ILA Atlantic Coast District and Co-Trustee of Local 1982 (during contract negotiations) and Rizo, Sr. (Tr. 431, 473, 537, 690 & 858.) The parties met approximately 13 times. (Tr. 431, 691 & 859.)

The main point of contention during the negotiations related to the unfunded liability language in Section 18.1 in the CBA. (Tr. 691-692.) Section 18.1 reads as follows:

18. PENSION AND HEALTH AND WELFARE FUND

18.1 Contributions. The Company shall accrue an obligation to the MWTTI- ILA Health, Welfare & Pension Fund ("Fund") for each hour of work paid to members of the collective bargaining unit by the Company, whether paid at straight-time, overtime, penalty or premium rates and including standby time, guaranteed time

³ Blakely is the Company’s Human Resources Manager.

⁴ Leach is the Company’s Director of Operations.

and other nonproductive time actually paid ("contribution"). The contribution rate shall be determined by the Great Lakes District of the ILA and the Employers Group. All contributions called for herein shall be accrued by the Company on or before the tenth day of the month following the month in which the hours were worked. Company contributions not accrued on or before the due date shall bear interest at the rate of one and one-half percent (1- ½%) per month until paid. A contribution report shall be furnished to the Union when contributions are accrued. ***The Fund is intended to constitute an unfunded obligation of the Company, but the Company shall maintain records of contributions, cost of benefits provided, and the current accrued balance.***

Benefits. The benefits to be provided by Health, Welfare & Pension Fund shall be determined by the Union subject to the following:

- a) The benefits to be provided shall be for the sole and exclusive benefit of the employees covered by this Agreement;
- b) The number of bargaining unit employees to be provided coverage shall be determined pursuant to the method previously used by the former Trustees of the Toledo World Terminal-ILA Health, Welfare & Pension Trust unless mutually agreed otherwise.
- c) The Company's liability for such benefits shall in no event exceed the required contributions.

Disputes. Disputes concerning the Fund shall be submitted as a grievance at Step Three of the Grievance Procedure within eighteen (18) months after the event giving rise to the grievance.

(Jt. 1.) (emphasis added.) The Company's position was to maintain the current language and keep the fund unfunded. (Tr. 692 & 859.) The union disagreed with this concept. (Id.)

The parties had discussed this language at least three times prior to the start of negotiations. There was a meeting in September 2009 related to this topic. (Tr. 694-695.) This meeting is referenced in the Company's December 12, 2012 Step Two Response to the Union's grievance related to Section 18.1. (Tr. 694-695 & R. 17.) In June 2010 there was a meeting at Fifth Third Bank Headquarters in downtown Toledo. (Tr. 692-694.) The union expressed concerns as to why the Pension Fund was funded, but not the Health and Welfare Fund. (Id.)

Lastly, in August 2010 the parties exchanged correspondence concerning Section 18.1. (Tr. 695-696 & R. 32.) The Company noted that the Health and Welfare Fund was “intended to constitute and unfunded obligation of the Company.” (R. 32, p. 2.)

The Company did not make any proposed changes to the language in Section 18.1 during any of the negotiation sections. (Tr. 703, 705, 860 & R. 1, Company’s 9/23/11 proposal; R. 2, Company’s 9/31/11 proposal; R. 3, Company’s 10/7/11 Proposal; R. 4, Company’s 10/13/11 proposal; and R. 5, Company’s 10/20/11 proposal.) The union made its first proposed change to the language in dispute on October 13, 2011. (Tr. 700-701, 703 & R. 7.) The union sought to do away with the language indicating that the Health, Welfare & Pension Fund was intended to constitute an unfunded obligation of the Company. (Tr. 700-701 & R. 7.) Instead, the union wished to insert the following sentence: “The Company and the Union agree to implement a Declaration of Trust and Trust Plan to cover the Pension Fund and Health and Welfare Trust Fund and Trust Plan prior to the expiration of this Agreement.” (Tr. 700-701 & R. 7, p. 13.) The Company did not agree to the union’s proposal. (Tr. 701.) This specific language the union set forth in its October 7, 2011 proposal remained unchanged in its November 8, 2011 proposal, its November 11, 2011 proposal, its November 16, 2011 proposal and its November 20, 2011 proposal. (Tr. 702 & R. 8-11.)

During the October 7 and October 13 meetings the Company indicated that this language has been in place since the 90’s, it was in compliance with the language and it had no qualms with how things were operating with respect to this language. (R. 108, p. 3 & R. 109, p. 3.) During the December 1, 2011 meeting the parties were again discussing the health and welfare language. Baker, Jr. acknowledged that the Company has always paid the employees insurance premiums. (Tr. 492-493, 709 & R. 39, p.4.) Nevertheless, Joseph remarked about the unfunded

liability and indicated that he viewed it as a roadblock and something that the union could not allow to continue. (Tr. 709 & R. 39, p.4.) Baker, Jr. stated that the union felt this language conflicted with and/or violated the Master Agreement and to consider this Step 1 of the grievance process. (Tr. 709, 860 & R. 39, p. 4.) However, the union did not submit the written grievance (G.C. 52) during the December 1, 2011 meeting. (Tr. 711.) Later in the meeting, Joseph accused the Company of refusing to bargain over the unfunded liability. (Id.) He further indicated that this was a roadblock for the union and that the union cannot go forward with this language. (Id.) Blakely responded that the Company is not bargaining in bad faith simply because it chooses to keep the language as is. (Tr. 712.) Blakely further responded that the Company wishes for the language to remain the same.

The parties met again on December 2, 2011. (Tr. 713.) Blakely reiterated that the Company was not interested in changing the language. (R. 111, p. 2.) Notwithstanding, Joseph presented the Company's committee with a handwritten proposal dated December 1, 2012 and proceeded to go through the proposal in chronological order. (Tr. 713, 861-862 & G.C. 51.) Joseph asked Blakely and Leach to share the proposal with their supervisors. (Tr. 713 & R. 111, p. 2.) Baker, Jr. asked for an extension on the Step 1 grievance discussion held the day before since the parties next meeting was not scheduled until December 8, 2011. (Tr. 713, 862 & R. 111, p. 3.) Joseph then stated that if the parties could come to some sort of an agreement with respect to the unfunded liability the grievance would go away. (Tr. 713, 862 & R. 111, p. 3.)

During the December 8, 2011 meeting Joseph submitted a proposal dated December 4, 2011 to the Company's committee. (Tr. 714-715, 863 & G.C. 53.) The parties once again discussed the language at issue. (Tr. 715.) The Company presented a counter proposal to the union's December 2, 2012 handwritten proposal. (Tr. 715.) The Company would agree to all

the financials the union was seeking, i.e., wage increase, funding the first 350 hours of the pension for those who had pension accounts and anyone else who came on board, Transportation Worker Identification Credential renewal fee and changes to the qualifying hours for healthcare, but only if the unfunded liability language remained the same as it was. (Tr. 717, 757-758, 862 & R. 40, pp. 2-6.) Blakely made it clear that the financials and the unfunded liability language were inextricably tied together. (Tr. 717, 862 & R. 40, pp. 2-6.) This language has been in place since the 90's and was already in existence when the Company took over the dock and the Company was adamant that it remain unchanged. (Tr. 862 & R. 40, pp. 5-6.) Blakely repeatedly stressed that the financials were contingent upon the unfunded liability remaining unchanged. (Tr. 717 & R. 40, pp. 3, 5 and 6.) Joseph indicated that he did not feel the union could agree to this and that the union would need to consult with legal counsel. (Tr. 497, 718 & R. 40, p. 5.) Accordingly, the parties did not reach an agreement with respect to the unfunded liability language at issue. (Tr. 718.)

On the evening of December 8, 2011 Joseph e-mailed Blakely a draft proposal dated December 8, 2011. (Tr. 433-434, 718, 864 & G.C. 54.) Joseph calls them drafts because they are incomplete documents until both parties finish completing it. (Tr. 538.) This is the reason he includes the following language: "The Employer and the Union reserves the right to add or delete form any proposal throughout the negotiating process." (Id. & G.C. 54.) After reviewing the document Blakely was hopeful the parties would reach an agreement as the union had appeared to withdraw its proposed changes related to the Health and Welfare Fund because the language was the same as that of the expired contract. (Tr. 435-436, 752, 764, G.C. 54, p. 13, Article 17.1 & Jt. 1, Article 18.1.) Blakely showed Leach a copy of the union's December 8, 2011 proposal on the morning of December 9, 2011. (Tr. 864.) This is the document the parties discussed

during the December 9, 2011 meeting. (Tr. 435, 437, 451 & 718-719.) The parties went through this document to ensure that the items discussed during the December 8, 2011 meeting were accurately reflected; meaning any changes in the proposal dated December 8, 2011 were actually agreed to. (Tr. 719.) When the parties reached the particular Health and Welfare language Blakely asked Joseph if the if the parties now had an agreement on this language considering the union removed its proposed changes and Joseph said the parties did have an agreement on this language. (Tr. 452, 720, 864 & R. 41, p.2.) Immediately thereafter the parties began discussing dates the parties could get together at the beginning of the year to resume negotiations. (Tr. 721, 864-865 & R. 41, p. 2.) The union was aware from the meeting on the previous day that the Company's committee was not available until after the New Year because Blakely was leaving the country for vacation. (Tr. 721, 864-865, R. 41, p. 2 & R. 40, p. 5.) During this conversation Baker, Jr. requested a short caucus. (Tr. 721, 864 & R. 41, p. 2.)

The union caucused in an adjacent room and the Company's committee heard a heated discussion during their caucus because their voices were quite loud. (Tr. 452, 721, 866 & R. 41, p. 2.) Upon returning to the room, Baker, Jr. handed a piece of paper to Joseph who then handed it to Leach. (Tr. 452, 721, 866-867 & R. 41, p. 2.) After reviewing it, Leach asked what it was and the union responded that it was a grievance on the unfunded liability. (Tr. 721-722, 866-867, R. 41, p. 2 & G.C. 52.) Blakely reviewed the grievance and inquired as to why the union was grieving the very language they had just agreed to. (Tr. 722 & R. 41, p. 2.) Baker, Jr. retorted that the union felt this language conflicted with the Master Agreement. (Tr. 722 & R. 41, p. 2.) Blakely disagreed and said that's the union's opinion. (Tr. 722 & R. 41, p. 2.) Blakely then stated that this is a problem and there is no agreement as the financials were contingent upon the union agreeing that the unfunded liability language that had been in place since the

1990's remain in place. (Tr. 462-463, 722, 868-869 & R. 41, p. 2.) Blakely reiterated that the Company had made it clear that unfunded liability language remaining as is was the lynchpin for the agreement. (Tr. 722-723, 868-869 & R. 41, p. 3.) Blakely could not believe that the union had finally agreed to keep the language as is and then just a few moments later filed a grievance over the very language they had just agreed to. (Tr. 722-723, 867 & R. 41, p. 3.) The meeting adjourned immediately thereafter. (Tr. 723, 868-869 & R. 41, p. 3.)

At no time during the December 9, 2009 meeting did anyone from the union's bargaining committee request that the Company sign tentative agreements. (Tr. 723, 765-766 & 871.) At no time during the December 9, 2011 meeting did any member of the union's bargaining committee request that the company sign a copy of the final agreement. (Tr. 724 & 871.) In fact, during the December 9, 2011 meeting, the union did not even give the Company a hard copy of what it purported is the final agreement (G.C. 56) reached by the parties. (Tr. 720 & 869-870.) More importantly, the parties did not even discuss this document during the meeting. (Tr. 446-449, 720 & 869-870.) Joseph gave Blakely a flash drive so he could copy the files onto his computer. (Tr. 446-449, 720 869-870.) As of June 2013, the union still has yet to send the Company a signed copy of the purported December 9, 2011 Agreement (Tr. 871 & G.C. 56.)

On December 12, 2011, the Company responded to and denied the union's December 9, 2011 grievance (G.C. 52) noting that the language has been in place for a significant amount of time (since the days off the previous employer) and that the union had been aware of this language as far back as September 2009, if not longer. (Tr. 724, 871 & R. 17.) The Company also attempted to schedule dates to meet and resume negotiations since the parties did not reach an agreement due to the union's actions during the December 9, 2011 meeting. (Tr. 725, 872-872.) Blakely sent such correspondence on December 13, 2011, January 4, 2012, January 6,

2012, January 9, 2012, January 17, 2012, February 8, 2012, February 13, 2012, March 2, 2012 and March 20, 2012. (Tr. 726-732, G.C. 64, R. 22-28.)

On February 24, 2012, the parties (Blakely, Leach, Baker, Jr., Joseph and perhaps Rizo, Sr.) met in a company conference room for apprenticeship training discussions. (Tr. 733 & R. 26-28.) During the meeting Blakely inquired as to when the parties were going to resume negotiations in order finish the negotiations. (Tr. 733-734.) Joseph responded that the union would never sign a document that has unfunded liability language and that such language is a deal breaker. (Tr. 734-735 & 872.) This is an undisputed fact as General Counsel chose not to call Joseph as a witness in its case in chief or on rebuttal. Additionally, Baker, Jr. did not address this testimony on rebuttal. More importantly, Joseph testified, under oath, in an unrelated proceeding that they could not sign the agreement because of the unfunded liability language. (Tr. 734 & 873.) Joseph testified as follows:

ANDRE JOSEPH

A witness herein, having been first duly cautioned and 7 sworn, was examined and testified as follows:

HEARING OFFICER FRATERNALI: Thank you. Please be seated. State and spell your name, for the record.

THE WITNESS: My name is Andre, (A-N-D-R-E), Joseph, (J-O-S-E-P-H).

HEARING OFFICER FRATERNALI: Counsel, you may proceed.

DIRECT EXAMINATION

BY MS. ZIVISKI:

Q. Where are you currently employed, Mr. Joseph?

A. With the Atlantic Coast District of the 20 International Longshoremen's Association.

Q. What's your position there?

A. Vice president.

Q. What are your duties as vice president?

A. I -- I'm assigned to areas of -- to assist locals, various locals. Also to straighten out any issues, or hear charges or complaints filed by members of the locals.

Q. As vice president of the Atlantic Coast District, what's your involvement with Local 1982?

A. I was appointed as co-trustee in September of 2011 to receive the trusteeship with another co-trustee.

Q. What were some of your duties as co-trustee?

A. I first had to implement a recordkeeping system that were more up-to-date, and verifying the membership status of all the members.

Also to assist in contract negotiations with the locals. And to assist in the grievances and arbitrations that were filed prior to my coming there.

Q. Mr. Joseph, I've handed you a document marked as ILA 1.

A. Yes.

Q. Can you identify that document?

A. Yes. It is a tentative agreement that was approved -- that was agreed upon by December 9th of 2011, which was -- it was effective dates of January 1, 2011 through December 31st, 2012.

Q. Were you involved in negotiating this document?

A. Yes, ma'am.

Q. Is there a signed final copy of this Collective Bargaining Agreement?

A. No, ma'am.

Q. Why not?

A. Because the -- there was one section of this contract that, as trustees, and also as vice president of the Atlantic Coast District we could not agree to until it was resolved through the Master Agreement of the Great Lake District, because the language called for an unfunded liability and a crude unfunded liability.

(R. 31, pp. 137, 139-140, R. 31(A) & R. 120.)

Obliterating his credibility, Joseph testified in this proceeding that the union has not refused to sign the proposal dated December 9, 2011. (Tr. 538-539 & G.C. 56.) He further testified that the only time the union said it could not sign the agreement was in mid-November. (Tr. 543.) Lastly, in direct conflict with the testimony noted above, Joseph testified as follows:

Q. But the local [contract] says that contributions do not have to be made by the Company; correct?

A. That's what the local contract said.

Q. Yes. And that's the clause that is in conflict, you believe, with the Master Agreement?

A. Very much.

Q. So this document could not be signed until this issue was resolved.

A. No. I disagree.

Q. I'm sorry?

A. I disagree with you. That's not true.

Q. Well, I guess we've already got your other testimony on the record. We'll let that speak for itself.

A. Well, it's not speaking well with me --

Q. Now, the issue with respect to the grievance that you submitted, it still has not been resolved, has it?

A. I don't believe it has.

(Tr. 558-559 & 562.)

Furthermore, after the hearing in the unrelated proceeding, Joseph and Leach were walking towards the elevators and Joseph again said he was never going to sign the document. (Tr. 873.) This testimony was not disputed on rebuttal by Joseph. The parties are currently involved in negotiations for a successor agreement and Joseph stated yet again that the parties never had an agreement. (Tr. 734-735 & 873.) Again, this testimony was not disputed on rebuttal by Joseph or Brown, both of whom are on the union's current bargaining committee.

B. The Company and the Union Did Not Reach a Meeting of the Minds

First, it should be noted that neither General Counsel nor the union called Joseph to testify. Joseph obviously played a vital role in these negotiations as both he and Baker, Jr. had authority as Co-Trustees of the union to negotiate and approve the Local Agreement. (G.C. 54 & Tr. 479-480.) The Company requests that an adverse inference be drawn that Joseph's testimony would not have supported and, indeed, would have contradicted Baker, Jr.'s proffered version of what occurred. See *International Automated Machines*, 285 NLRB 1122, 1122-1123 (1987), *enfd.* 861 F.2d 720 (6th Cir. 1988) (“[W]hen a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge.”). It is clear why General Counsel and/or the union did not want to call upon Joseph to testify. Joseph stated on more than one occasion that he, as an officer of the union, would never sign an agreement which contained the unfunded liability language and he admitted under oath in an unrelated proceeding the parties did not have an agreement because the union could not agree to the unfunded liability.

Secondly, ALJ Carissimi found Blakely to be a credible witness and relied upon his testimony in making his findings related to the negotiations for a successor contract. Specifically, ALJ Carissimi stated:

In making my findings regarding the negotiations for a new agreement between Local 1982 and the Respondent in 2011- 2012 I rely principally on the testimony of Blakely and the Respondent's bargaining notes. I found Blakely's testimony to be detailed and consistent on direct and cross-examination. It is also consistent with the Respondent's contemporaneous notes of the bargaining sessions. I found the testimony of Joseph and Baker to be less detailed and complete and to the extent their testimony conflicts with that of Blakely, I credit Blakely.

(Decision, p. 24 at fn 14.) The relevant record evidence supports this finding.

1. December 8, 2011

Joseph submitted a proposal dated December 4, 2011 to the Company's committee. The Company presented a counter proposal to the union's December 2, 2012 handwritten proposal. The Company would agree to all the financials the union was seeking, but only if the unfunded liability language remained the same as it was. Blakely made it clear that the financials and the unfunded liability language were inextricably tied together as this language has been in place since the 90's and was already in existence when the Company took over the dock and the Company was adamant that it remain unchanged. Blakely repeatedly stressed that the financials were contingent upon the unfunded liability remaining unchanged. Hence, the language remaining the same in both substance and practice was the quid pro quo for the Company's offer. Joseph indicated that he did not feel the union could agree to this and that the union would need to consult with legal counsel. (Tr. 497, 718 & R. 40, p. 5.) Thus, it is clear that the parties did not reach an agreement with respect to the unfunded liability language at issue during this meeting.

General Counsel's contention that this proposal did not directly address the unfunded liability language is simply not true. (General Counsel's Exceptions, p. 14.) As indicated above, the Company's proposal accepting the financials that the union was seeking was conditioned upon the unfunded liability remaining the same in both substance and practice. This language

has been in place since the 90's, was already in existence when the Company took over the dock and the Company was adamant that it remain unchanged in both form and substance.

General Counsel and the union now maintain that the requisite meeting of the minds occurred on the evening of December 8, 2012 when Joseph e-mailed Blakely a draft proposal dated December 8, 2011. (Tr. 433-434, 718, 864 & G.C. 54.) Yet, the testimony provided by Baker, Jr. and the record evidence make it clear that the union was uncertain as to when the parties purportedly reached an agreement. For instance, Baker Jr.'s December 16, 2011 letter to Blakely states that the parties completed the negotiations for a new Local Agreement during the December 8, 2011 meeting. (G.C. 58.) Clearly, that was not the case. As noted above, the union indicated that that they could not accept the Company's counter proposal because they had to talk to legal counsel. However, at the hearing, Baker, Jr. testified that it was not until the evening of December 8, 2011 when Joseph e-mailed the proposal to Blakely that the parties had an agreement. (Tr. 498.) Later, Baker, Jr. testified that that the union did not accept the Company's counter proposal until the December 9, 2011 meeting. (Tr. 507.)

2. December 9, 2011

The parties went through the document Joseph e-mailed to Blakely the previous evening to ensure that the items discussed during the December 8, 2011 meeting were accurately reflected; meaning any changes in the proposal dated December 8, 2011 were actually agreed to. When the parties reached the health and welfare language Blakely asked Joseph if the if the parties now had an agreement on this language since the union removed its proposed changes and Joseph said the parties did have an agreement on this language. Immediately thereafter, the parties began discussing dates the parties could get together at the beginning of the year to

resume negotiations because Blakely was leaving the country for vacation. During this conversation Baker, Jr. requested a short caucus. (Tr. 721, 864 & R. 41, p. 2.)

Upon returning to the room, the union submitted the grievance. Baker, Jr. instructed Blakely that if the Company won the grievance nothing would change, but if the union won the grievance the unfunded health and welfare language would have to be changed. (Tr. 508.) Consequently, the union reneged on the tentative agreement reached prior to the caucus. At that moment, Blakely stated that this is a problem and there is no agreement as the financials were contingent upon the union agreeing that the unfunded liability language that had been in place since the 1990's remain in place. Blakely reiterated that the Company had made it clear that unfunded liability language remaining as is was the lynchpin for the agreement.

Even though General Counsel and the union now maintain that the parties had reached a complete agreement on December 8, 2011, the union failed to bring hard copies of the purported Agreement dated December 9, 2011 (G.C. 56.), let alone signed copies. At no time during the December 9, 2009 meeting did anyone from the union's bargaining committee request that the Company sign tentative agreements. If they had, Blakely would only have signed off on tentative agreements if the parties had clearly agreed on everything. (Tr. 765.) He would have caucused and conferred with Leach to make sure the parties had an agreement on every single item. (Id.) Only at that point would he have signed. (Id.) Furthermore, at no time during the December 9, 2011 meeting did any member of the union's bargaining committee request that the Company sign a copy of the final agreement nor did the parties have a hand shake agreement.

The record evidence clearly establishes, and ALJ Carissimi so found, that the parties had not reached a meeting of the minds due to their differing positions as to whether the unfunded

liability included in the prior contract should be included in the successor contract. Based upon all of the above, ALJ Carissimi correctly found as follows:

The evidence establishes that in the middle of the review of the draft agreement on December 9, the Union filed a grievance claiming that the parties' oral agreement on the Union's proposed paragraph 17.1 constituted a violation of the master agreement between the parties. The grievance sought as a remedy that the Respondent pay its unfunded liability to the health and welfare fund pursuant to a payment plan. Through the filing of this grievance, the Union was, in effect, reverting to its position expressed in its proposal on December 2, in which it sought to have the Respondent pay its unfunded liability pursuant to a payment plan. In summary, the Union's actual position was to accept the Respondent's acquiescence to its economic proposals but seek to have its apparent agreement to the unfunded liability language overturned by an arbitrator. When confronted with this major change in the Union's position, Blakely immediately stated to the Union representatives that there was no agreement. He reminded them that the Respondent had agreed with the Union's position on the financial issues in exchange for the unfunded liability language remaining the same as it is been in the prior contract.

The difference between the parties regarding the issue of whether the Respondent's accrued obligation to the health and welfare portion of the joint fund should continue to be unfunded is material and substantial. Accepting the Union's estimate, the amount owed was approximately \$500,000 to \$800,000.

Under the circumstances it is clear that there has been no "meeting of the minds" on all the substantive and material terms of the collective-bargaining agreement. Rather, the evidence establishes that the parties maintained their differing positions as to whether the unfunded liability language of the prior contract should be included in a new contract. The steadfast adherence to differing views on a substantial and material contract provision has been found by the Board as indicative of the fact that a complete agreement has not been reached. *Intermountain Rural Electric Assn.*, 309 NLRB 1189, 1193 (1992). In addition, the General Counsel has not established that there was a document which the Union sought to have the Respondent execute, reflecting the full and complete terms of an entire collective-bargaining agreement.

(Decision, p. 32.)

3. Board precedent does not support General Counsel's contention that the parties had the requisite meeting of the minds

The obligation to bargain collectively under Section 8(d) of the Act requires either party, upon the request of the other to execute a written contract incorporating the agreement reached during the negotiations. See, *H.J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). This requirement only arises after the parties have reached a meeting of the minds on all substantive and material terms. See, *Hempstead Park Nursing Home*, 341 NLRB 321, 322 (2004). Additionally, General Counsel bears the burden to show that the parties had the requisite meeting of the minds on the agreement and that the document which the Company refused to execute accurately reflected the agreement. See, *Windward Teachers Assn.*, 346 NLRB at 1150.

General Counsel maintains that ALJ Carissimi did not properly apply Board precedent to the particular facts of this case. (General Counsel's Exceptions, p. 13.) General Counsel relies heavily upon *Windward Teacher's Ass'n*, *supra*, to support its position that the once the parties agree to the same language on all the material terms of an agreement, a contract is reached. (*Id.*, p. 19.) The facts in *Windward* are inapposite to the facts presented herein. ALJ Carissimi properly distinguished *Windward* and concluded as follows:

I find that the instant case is distinguishable from *Windward Teachers Assn.*, 346 NLRB 1148 (2006) which is relied on by the General Counsel to support his position. In that case, the General Counsel contended that the parties agreed on the terms of a bonus clause as those terms were set forth in a complete collective-bargaining agreement. The evidence reflected that the parties believe they had reached a successor contract at their last bargaining session. The parties concluded the session with handshakes and statements reflecting the belief that they had successfully negotiated a contract. In addition, the respondent union had reviewed *several versions of the contract without objecting to the terms of the bonus clause and the membership had ratified a tentative agreement that contained the disputed clause*. Later, however, the respondent union claimed that the language of the bonus clause was not what it had agreed to. The Board found that, under the circumstances present in that case, that the parties had reached a

meeting of the minds on a complete contract and that the document submitted to the respondent union accurately reflected that agreement.

In the instant case, there was certainly no indication at the last meeting that the parties had successfully negotiated an agreement. Rather, shortly after Blakely had indicated there was no agreement, the meeting ended without any manifestation that the parties had reached an agreement. In addition, the Union never tendered a complete collective-bargaining agreement to the Respondent and requested that it be executed.

(Decision, pp. 32-33.) (emphasis added.) As ALJ Carissimi noted, the parties in *Windward* ended their last bargaining session with handshakes and mutual expressions of gratification that they completed the successful negotiation of a contract. With respect to this behavior, the Board stated:

Such conduct is a hallmark indication that a binding agreement has been reached at the end of negotiations. See *Graphic Communications Union District 2 (Riverwood International USA)*, *supra* (handshakes to seal the parties' successful arrival at agreement); *Brooks, Inc. v. International Ladies' Garment Workers Union*, 835 F.2d 1164, 1169 (6th Cir. 1987) (“tone and temperament of the parties” at the end of negotiations signaled agreement).

Windward Teachers Assn., 346 NLRB at 1151. As ALJ Carissimi noted, no such conduct occurred in this matter. Rather, the meeting ended after Blakely expressed that there was not an agreement and he subsequently sent numerous correspondence to the union requesting dates to resume bargaining since the parties had yet to reach an agreement.

General Counsel also relies upon *Young Women's Christian Assn.*, 349 NLRB 762 (2007). Similar to *Windward*, the facts in *Young Women's Christian Assn.* are inapposite to the facts herein. In *Young Women's Christian Assn.* the Company presented the union with a final offer on April 5, 2005 and the union accepted the final offer on April 20, 2005. *Id.* at 762. The parties stipulated that the union accepted the Company's final offer. *Id.* at 762 & 768-769. The Company then began to prepare a written document setting out the terms of the agreement. *Id.* at

762. While the Company was still in the process of creating a written document for agreement, it received cards signed and dated by 34 of its 64 employees indicating they no longer wanted to be represented by the union. *Id.* As a result, the Company informed the union that it had lost majority status and, as such, the Company would not sign the agreement or recognize the union. *Id.* Notably, the 32nd card, on which majority status hinged, was dated 18 days after the parties had reached an agreement on all the outstanding issues. *Id.* Nevertheless, the Company argued that it could lawfully withdraw recognition from the union and subsequently refuse to execute the contract because the union lost its majority status before the oral agreement between the parties was reduced to writing and formally executed. *Id.* The Board concluded as follows:

As the Supreme Court has explained, the “object of the National Labor Relations Act is industrial peace and stability, fostered by collective-bargaining agreements providing for the orderly resolution of labor disputes between workers and employees.” *Auciello Iron Works v. NLRB*, 517 U.S. 781, 785 (1996). In *Auciello Iron Works*, the Court upheld the Board's policy that a union is “entitled . . . to a conclusive presumption of majority status during the term of any collective-bargaining agreement, up to three years.” Accordingly, the employer may not decline to bargain with, or withdraw recognition from, the union during that period.

This rule applies “[o]nce final agreement on the substantive terms” of a collective-bargaining agreement has been reached, “regardless of the status of any written instrument incorporating that agreement,” and even if the employer “has lawful grounds for believing that [the union] has subsequently lost its majority status,” which might otherwise permit a withdrawal of recognition. *North Bros. Ford*, 220 NLRB 1021, 1022 (1975). For example, in *Utility Tree Service*, the Board rejected an employer’s defense that the union’s actual loss of majority status 2 days after the parties reached agreement on a contract justified its refusal to execute the collective-bargaining agreement. This case, then, calls for a straightforward application of well-established principles. As the judge correctly concluded, the Respondent’s withdrawal of recognition from the Union, following the parties’ agreement on a contract, violated the Act.

Id. at 763. (Internal citations and footnotes omitted.) The Company maintains that it is General Counsel who failed to properly apply Board precedent to the particular facts of this case, not ALJ Carissimi.

IV. CONCLUSION

For the reasons outlined above, the Company respectfully requests the Board to affirm ALJ Carissimi's rulings, findings and conclusions that it did not violate Sections 8(a)(1), (3), (4) of the Act with respect to the alleged refusal to hire and/or employ Otis Brown, Lester Corggens, Laverne Jones, Ricardo Canales, Joe Victorian Jr., Don Russell and Clifford Anderson from April 1, 2009 through May 13, 2009. Likewise the Company respectfully requests the Board to affirm ALJ Carissimi's rulings, findings and conclusions that it has not refused to execute and/or implement an agreed upon collective bargaining agreement and, as such, did not violate Sections 8(a)(5), and (1) of the Act.

Dated at Dublin, Ohio on this 24th day of January, 2014.

Respectfully submitted,

/s/ Aaron T. Tulencik

Ronald L. Mason
Aaron T. Tulencik
Mason Law Firm Co., LPA
425 Metro Place North, Suite 620
Dublin, Ohio 43017
p: 614.734.9450
f: 614.734.9451

*Counsel for Respondent, Midwest
Terminals of Toledo International, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 24, 2014, an electronic original of Respondent Midwest Terminals of Toledo International, Inc's Answering Brief to the General Counsel's Exceptions to the Honorable Judge Mark Carissimi Decision, was filed via the Department Of Labor, National Labor Relations Board electronic filing system, Office of the Executive Secretary and, further, that copies of the foregoing Brief were transmitted to the following individuals by electronic mail:

Cheryl Sizemore, Esq
National Labor Relations Board, Region 8
Anthony J. Celebreeze Federal Building
1240 E. Ninth Street, Room 1695
Cleveland, OH 44199-2086
Cheryl.Sizemore@nlrb.gov

Counsel for the General Counsel

Joseph Hoffman Jr., Esq.
Faulkner, Hoffman & Phillips, LLC
20445 Emerald Parkway Dr., Suite 210
Cleveland, Ohio 44135
Hoffman@fhplaw.com

Counsel for Charging Party, Local 1982

/s/ Aaron T. Tulencik
Aaron T. Tulencik