

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**MIDWEST TERMINALS OF  
TOLEDO INTERNATIONAL**

**and**

**Case Nos.      8-CA-038581  
                     8-CA-038092  
                     8-CA-038627  
                     8-CA-063901  
                     8-CA-073735  
                     8-CA-092476  
                     8-CA-098016**

**MIGUEL RIZO, JR., An Individual  
OTIS BROWN, An Individual  
MARK ANTHONY LOCKETT, SR., An Individual**

**and**

**LOCAL 1982, INTERNATIONAL  
LONGSHOREMEN'S ASSOCIATION, AFL-CIO**

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

Administrative Law Judge Mark Carissimi<sup>1</sup> issued his decision in this matter on November 12, 2013.<sup>2</sup> The Respondent filed Exceptions and Brief in Support of Exceptions on January 10, 2013. Counsel for the General Counsel respectfully submits this Answering Brief pursuant to Section 102.46(d) of the Board's Rules and Regulations.<sup>3</sup>

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<sup>1</sup> Judge Carissimi will be referred to as "ALJ Carissimi"

<sup>2</sup> JD-80-13

<sup>3</sup> In this Answering Brief, "ALJD p. \_\_, lines \_\_ shall refer to the pages and lines in the ALJ's Decision, JD-80-13; numbers appearing by themselves in this Answering Brief shall refer to page numbers in the official transcript of the proceedings; "GC Exh." shall refer to Counsel for the General Counsel's Exhibits; "R Exh." shall refer to Respondent's Exhibits; "J. Exh." shall refer to Joint Exhibits and "R. Excep." shall refer to Respondent's Exceptions.

Counsel for the General Counsel contends that the ALJ's findings and conclusions as they relate to the Exceptions filed by Respondent are well-supported by record evidence and are an accurate application of relevant case law. ALJ Carissimi drew logical inferences and made sound credibility findings which are clearly supported by the record. The Respondent's Exceptions are based upon mischaracterizations of the ALJ's credibility determinations, Board law, and the underlying record. They should be overruled in their entirety and the ALJ's decision affirmed with respect to the Exceptions filed by Respondent.

**EXCEPTIONS I, IV, VI, VII –ALJ CARISSIMI'S CREDIBILITY DETERMINATIONS REGARDING SECTION 8(A) (1) VIOLATIONS INVOLVING MIGUEL RIZO SR., MARK LOCKETT, AND KEVIN NEWCOMER**

As a matter of law, Counsel for the General Counsel notes that the Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect. Standard Dry Wall Products, 91 NLRB 544 1950, enf'd. 188 F.2d 362 (3d Cir. 1951).

Respondent's Exceptions I, IV, VI, and VII are based on numerous credibility findings concerning independent violations of Section 8(a) (1). The specific Complaint allegations include Judge Carissimi's findings that (1) Respondent by, Tim Jones, threatened employees on or about April 24, 2009 by stating that Respondent would not hire employees who had filed lawsuits and ULP charges; (2) Respondent by, Terry Leach, coercively told employee Kevin Newcomer that the Union caused him to lose his overtime on September 2012; (3) and Respondent, by Terry Leach, on November 14, 2012, threatened Union Steward Mark Lockett with removal from the jobsite and

physically grabbed Lockett. It is clear Respondent failed to consider the extensive credibility analysis contained in ALJ Carissimi's decision concerning these issues.

In connection with Vice President of Operations Tim Jones' threat to not hire employees, General Counsel's witness Miguel Rizo Sr. testified regarding this matter. ALJ Carissimi described Rizo's testimony regarding Jones' threat "as clear and unequivocal". ALJD, p. 18, line 13. Rizo Sr. provided a detailed account regarding Jones' statement. Significantly, he gave specific details as to the location and circumstances in which Jones made the statement.

To illustrate, Rizo testified that Jones approached him in the A-1 warehouse on about April 24, 2009, while he was in the process of warranting aluminum that had been shipped by truck. Tr. 184, 185. Jones told him that a nut coke ship was scheduled to enter the port soon. Jones stated that he was in a dilemma because he needed to remove at least eight skilled men from the current job to work on the ship. Tr. 185. Rizo responded that there was no problem because he could pull the skilled men off the aluminum job to work on the vessel and could then hire regular list men to work the aluminum job. Tr.185. Jones responded that he could not hire regular list men because the people at the top of the list either had charges or lawsuits filed against the Company. Tr. 185, 186. Rizo told Jones that his statement was discriminatory and that he was going to have to file a grievance over the matter. Tr. 186

Consistent with his testimony, Rizo subsequently filed a grievance over the matter. ALJ Carissimi noted that Rizo's testimony was supported by the grievance that he filed concerning Jones' unlawful threat. ALJD, p. 18, line 14; G.C. Exh. 2. Equally important, ALJ Carissimi observed that Jones, in his written response to Rizo's



grievance, “did not specifically deny making the statement but rather only suggested that Rizo took it out of context or may have misunderstood it”. Id at line 14-16; G.C. Exh. 3.

Additionally, Respondent failed to present a witness to contradict Rizo Sr.’s testimony. These facts alone demonstrate that Respondent has not provided any basis for reversing the Judge’s credibility findings. Standard Drywall Products, 91 NLRB 544 (1950), enf’d. 188 F.2d 362 (3d Cir. 1951)

Similarly, ALJ Carissimi properly credited the testimony of General Counsel’s witnesses Kevin Newcomer and Randy Sims when he found that Superintendent Terry Leach coercively told Newcomer that his Union caused him to lose overtime. ALJD p. 35, line 46-47, p. 35, line 1-2. As an initial matter, ALJ Carissimi credited Leach’s testimony that Union Steward Sims also wanted to receive overtime pay even though employee Newcomer was the only employee assigned overtime. ALJD p. 35, line 24-37. It is undisputed that Leach told Sims during a face to face confrontation that he had to depart the facility and that Leach was angry about Sims refusal to leave work while another employee continued to work. It is also undisputed that Leach telephoned Newcomer about ten minutes after he began to work overtime to stop working. ALJD p. 34, line 35-36; Tr. 570, 571. Newcomer testified that Leach said, “Stop, stop, stop loading the product. Get the fuck off the loader and get the fuck off the property.” Tr. 570, 571

As Newcomer began to walk away from the facility, Sims was waiting nearby. Sims testified that he observed Leach pull over his vehicle near Newcomer and heard Leach tell Newcomer that he should “blame your fucking Union guy for fucking you out your overtime”. Tr. 108, 109.

Judge Carissimi noted that he generally credited the testimony of Sims and Newcomer over that of Leach over this issue as their statements were mutually corroborative. ALJD p. 34 line 42-43. Similar to Sims, Newcomer testified that Leach approached him while he was walking away from his loader and stated that “your union brothers are fucking you, or screwing you”. Tr. 574. Newcomer confirmed that Sims was nearby and, when Sims approached him, he told Sims “thanks for fucking up my overtime.” Tr. 574. There is no reason to believe that employee Newcomer has any motive to falsify his testimony and, therefore, no reason to doubt the truthfulness of his testimony regarding Leach’s statement to him. Flexsteel Industries, 316 NLRB 745 (1995). And, as noted by ALJ Carissimi, “Leach’s statement would reasonably discourage Newcomer and other employees from supporting the Union.” ALJD p. 35, line 46-47, p. 36, line 1-2.

Likewise, ALJ Carissimi properly credited the testimony of Mark Lockett over Terry Leach when he found that Superintendent Leach threatened and assaulted Union Steward Mark Lockett. Moreover, ALJ Carissimi described Lockett’s testimony as containing “substantial detail and was consistent on both direct and cross examination.” ALJD p. 37, line 5-7. Equally important, Lockett readily admitted that both he and Leach had raised voices and used profanity during their discussion regarding bargaining unit work. Tr. 52. So, he was not trying to minimize his own strong emotional response during the event in question.

In that connection Lockett testified that he approached two maintenance employees who were shoveling and performing work on a skid steer, and told them to stop because they were performing bargaining unit work. Tr. 49, 50. They informed

Lockett that Leach had instructed them to do the work. Tr. 50. As Lockett began to call Leach on the phone, Leach arrived in his truck. Lockett questioned Leach about the employees who were performing bargaining unit work. Leach told Lockett that it was not bargaining unit work and that he (Leach) had asked them to perform the work. Tr. 51. After further discussion, Leach told Lockett that he had no right to be in the area. Lockett responded that he had a right to investigate a complaint that involved a contractual issue. Tr. 52. Lockett testified that “Leach told me to get my ass back on my forklift, and go back to work before he had me removed from the job.” Tr. 52. Lockett told Leach “to go ahead and try it.” As Lockett tried to get on his forklift, Leach grabbed his arm with enough force to swing him around and cause them to be face-to-face. Leach told Lockett that if he didn’t quit talking “that way”, Leach would fire him. Tr. 52,67. Lockett snatched his arm away and told Leach not to touch him again. Tr. 52,53.

Lockett filed a grievance over the maintenance employees performing bargaining unit work. G.C. Exh. 7; Tr. 53. More importantly, Lockett filed a police report with the Toledo Ohio Police Department one day after he was threatened and assaulted by Leach. G.C. Exh. 8; Tr. 53. The filed report corroborates the testimony provided by Lockett. ALJD p. 37 line 7-8. Notably, the report was filed while Lockett was still employed.

Respondent relies on the timing of the filing of the Board charge to argue that Lockett fabricated the charge in response to his termination. The mere fact that the Board charge regarding the incident was filed subsequent to Lockett’s termination does not detract from the fact that Lockett was threatened and assaulted by Leach and reported the same to the police a day later.

By observing Lockett's demeanor and finding Lockett's testimony was corroborated by the police report, ALJ Carissimi credited Lockett's testimony over Leach regarding the incident. Further, ALJ Carissimi determined that it was implausible to believe Leach's account that Lockett acted aggressively and used profanity while he (Leach) remained calm throughout the entire incident. ALJD p. 37, line 4-12.

In each of these three instances, ALJ Carissimi made sound credibility determinations based on witness demeanor, corroborating testimony and documentary evidence. Equally important, Respondent has not presented evidence that warrants reversal of ALJ Carissimi's credibility findings and resolutions under Board law. Standard Drywall Products, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951).

**EXCEPTION II - ALJ CARISSIMI'S FINDING THAT RESPONDENT VIOLATED SECTION 8(A) (3) BY THE FAILURE TO HIRE OTIS BROWN IN JUNE, JULY, AND AUGUST 2008**

In this Exception, Respondent argues that it has rebutted General Counsel's prima facie case demonstrating that Respondent failed to hire Brown because of his union and protected activities. This is simply not so. As an initial matter, Respondent asserts that Brown was not hired because he did not appear at shape up or because he was not qualified to perform the work. R. Excep. p. 19. Respondent primarily relies on the security gate log records to demonstrate that Otis Brown failed to appear for work on certain dates during the months of June, July, and August 2008. Yet, Respondent's witness, Superintendent Terry Leach, on direct examination explained that the security gate log records introduced into evidence cannot be solely relied upon to determine whether an employee appeared for hire. Leach testified that the records do not reflect all

of the gates employees use to enter and exit the facility. Tr. 888. 889. Respondent's attempt to now argue otherwise thus contradicts its own witness.

Significantly, ALJ Carissimi credited Brown's testimony that he regularly appeared for work. ALJD p. 10, lines 10-16. Additionally, the Respondent argues that less senior employees, such as Lavern Jones and Mark Ward, were hired ahead of Brown based on Brown's inability to perform certain work. R. Excep. p. 19-21. Respondent's argument is contradicted by the evidence. Both Superintendent Leach and Brown testified that Leach had sought to have Brown join the referral list of skilled employees for several years. Tr. 87, 88, 250; ALJD p. 9 line 15-17. It is implausible to now believe that Respondent would regularly request Brown to join the skilled list if he did not possess the required skills.

Brown testified that he was regularly assigned to operate or perform work on the forklift, end loader, crane, rail cars, hatch leader, and signalman. Tr. 89, 90. A cursory review of General Counsel's Exhibits demonstrates that Brown regularly worked as a foreman and/or gang leader on the ships. G.C. Exhs. 33 pgs. 1,2,8,12,15,19,20,23 thru 26, 30, 33, 34, 36, 49. Leach admitted Brown's experience in these areas. Tr. 89,90,91.

Even more compelling, just prior to Brown engaging in union and protected activity, the evidence demonstrates that in April and May 2008, as the stevedoring season began to pick-up, regular list employees Claude Tucker (No. 1 in seniority) and Otis Brown (No. 2 in seniority) were hired to work almost daily with the skilled employees when they appeared for hire. Tr. 251;G.C. Exhs. 32 pgs. 1-9; G.C. Exhs. 33 pgs. 1,2,8,12,15,19,20,23-26,30,33,34,36,49. As ALJ Carissimi found, Respondent has

offered no specific reason for the precipitous decline in the number of hours of work Brown performed in June, July, or August 2008. ALJD p. 12, line 27-29.<sup>4</sup>

Based on Respondent's inability to rebut General Counsel's prima facie case, the ALJ's credibility determinations made concerning relevant testimony, and documentary evidence, ALJ Carissimi's finding that Respondent violated Section 8(a)(3) of the Act by failing to hire Otis Brown in June, July, and August 2008 should be affirmed.

**EXCEPTION III - ALJ CARISSIMI'S FINDING THAT RESPONDENT VIOLATED SECTION 8(A) (3) BY NOT ASSIGNING OTIS BROWN LIGHT DUTY WORK**

Contrary to Respondent's Exception, ALJ Carissimi correctly concluded that Respondent violated Section 8(a) (3) of the Act by refusing to assign Otis Brown light duty work on November 27, 2008 (Thanksgiving Day) and several days thereafter.

In support of his findings, ALJ Carissimi initially noted that Respondent had a practice of providing injured employees with available light duty work opportunities. ALJD p. 15, line 5-6, 10-11. This was the established practice for both regular list and skilled list employees. Tr. 10-11. In accordance with established practice, Respondent, by its safety officer Jim Hasenfratz, informed Otis Brown that he would be provided light duty work to accommodate his restrictions. Tr.305,306. Brown had provided Hasenfratz with his work restrictions prior to returning to work. Id. On November 26, 2008, Supervisor John Staler informed Brown that Respondent had decided to place him on the hopper for the entire day to accommodate his restrictions. Brown performed the work as assigned. Tr. 308, 311, 357, 790.

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<sup>4</sup> A comparison of G.C. Exhibits 26 and 29 demonstrate that prior to Brown's union activity and at the onset of the 2008 shipping season; Brown had worked the same amount of hours as co-worker Claude Tucker. Subsequent to Brown's union activity, the Respondent's records demonstrate that Brown's hours had been dramatically reduced.

Brown reported for work the following day, (Thanksgiving) and he noticed that he was again assigned the hopper position. Tr. 309, 311. Just prior to assigning work to other employees, Superintendent Leach and Supervisor Staler spoke privately. One of them subsequently removed Brown from the hopper job. Id. Once the Respondent began to assign work, Brown immediately questioned Leach regarding Respondent's failure to assign him the hopper job. Tr. 31. Leach asserted that they assigned another individual the hopper job and that there was no work Brown could perform with his restrictions. Brown offered to perform other work. Brown also reminded Leach that he had worked on the hopper the day before. In the presence of other employees, Leach asserted that he had spoken to Brown's doctor and that Brown's injury was more serious than what was listed on his work restrictions. Tr.311, 312. At no time did Leach provide any other reason for denying Brown work. Several employees who were present when Leach claimed to have spoken to Brown's doctor testified that the conversation with the doctor was the sole basis for Leach denying Brown work. ALJD p. 16, line 22-23; Tr. 43, 44, 182, 183.

After this incident, Brown obtained a letter confirming that his doctor never spoke to Leach or anyone else at Respondent's facility. (Tr. 312, 313; G.C. Exh. 5(b) When Brown confronted Leach with this letter, Leach did not respond. At the hearing, Leach confessed that he had never spoken to Brown's doctor regarding his restrictions. Tr. 790.

In his decision, ALJ Carissimi addressed the fact that Brown's testimony regarding this incident was corroborated by two individuals who were present at the hiring area, Miguel Rizo Sr. and Mark Lockett. ALJD p. 16, line 22-23. Further, Brown's testimony is supported by the filing of a grievance on this very issue. Id. at line

12-18; G.C. Exh. 5(a). Based on the shifting reasons provided by Respondent, the ALJ properly determined that the Respondent cannot demonstrate that it would have taken the same action even in the absence of Brown's protected conduct. ALJD p. 16, lines 40-47, p.17, line 1-20.

ALJ Carissimi, applying the Board's ruling in Golden State Foods Corp., 340 NLRB 382, 385 (2003) to these facts, concluded that Leach's asserted reason at the time that he denied Brown work was because he (Leach) had spoken to Brown's doctor. Leach's statement to Brown was patently false and pretextual. ALJD p. 16 lines 42-47, p. 17 lines 1-13. This finding alone warranted the conclusion that Respondent violated Section 8(a) (3). Even so, ALJ Carissimi further supported his finding by noting that Respondent treated Brown disparately from employee Newcomer who was injured during the same time period. So, Respondent acted in a manner inconsistent with its own past practice regarding the assignment of light duty work to Brown. ALJD p. 17, lines 16 – 18.

Based on the pretextual conduct of Superintendent Leach and Respondent's failure to act in a manner consistent with past practice regarding the assignment of light-duty work, ALJ Carissimi properly determined that Respondent violated Section 8(a) (3) of the Act by refusing to assign Brown light duty work.

**EXCEPTION V - ALJ CARISSIMI'S FINDING THAT RESPONDENT VIOLATED SECTION 8(A) (3) BY THREATENING TO DISCIPLINE MIGUEL RIZO JR.**

Contrary to Respondent's claim, the Board law cited by ALJ Carissimi supports his finding that Respondent's threat to discipline and/or terminate Miguel Rizo Jr. violated Section 8(a) (1) of the Act. Respondent denies that it issued a written threat to

discipline Rizo Jr. because he filed a grievance. Rather, it claims that the warning was issued because his grievance sought 8 hours of pay on a day when he did not present himself for work. R. Excep. p.25. The Respondent's contention is a distinction without a difference.

Rizo Jr. filed a grievance and requested that he be made whole because Respondent had allowed employees from another Company to perform bargaining unit work. Tr. 621, 622. The Respondent takes the position that it had a lawful basis for issuing the written warning since the grievance requested that Rizo Jr. be paid for work when he did not report to work. R. Excep. p. 25; G.C. Exh. 20, (2) The Respondent asserts that this type of grievance filing is fraudulent and is not protected conduct. R. Excep. p. 25. The Respondent's contention is both misguided and contrary to Board law.

First, Rizo Jr. never stated in his grievance that he was present for shape-up, nor did he falsify records asserting such a claim. G.C. Exh. 20. The Respondent was certainly not placed at a disadvantage as it clearly knew that Rizo Jr. had not appeared at shape up on the day in question. Rizo Jr. was simply advancing a grievance argument in good faith, something the Act protects his right to do, even if his claim turned out to have no merit under the contract. See Yellow Transportation, Inc. 343 NLRB 43, 47 (2004) ALJD p. 23, line 5-9.

The cases relied upon by Respondent to support its position are distinguishable from the facts here. ALJ Carissimi recognized that the cases cited by Respondent, such as United States Postal Service, 310 NLRB 530 (1993) (upholding the discharge of a former chief shop for falsifying court leave documents for additional pay); and Syracuse Scenery & Stage Lighting Co., 342 NLRB 672 (2004) (upholding the discharge of

employees who prepared and submitted fraudulent time sheets.<sup>5</sup>) are not applicable here. ALJD, p. 23, line 24-35. In those cases, the employee clearly intended to deceive and misrepresent facts to obtain additional monies. Id. at line 31-32. In Miguel Rizo Jr.'s grievance there was no intention to deceive. He never alleged that he appeared for shape up. Instead, he asserted that he is entitled to be made whole because the Employer hired non-bargaining unit employees to perform unit work. G.C. Exh. 20. Rizo Jr. testified that this was the basis for his grievance and he consulted with Local 1982 Union Trustee/President of the Great Lakes District Council ILA John Baker Jr. prior to filing the grievance. Baker Jr. approved the filing of the grievance. Tr. 621, 622. These facts demonstrate that Rizo Jr. had a good faith basis for filing a grievance. Whether the grievance had merit should not be a subject for discipline. See Regency Electronics, Inc., 276 NLRB 4 fn. 3.<sup>6</sup> ALJD p. 23, line 5-11.

**EXCEPTION VIII - ALJ CARISSIMI'S FINDING THAT RESPONDENT VIOLATED SECTION 8(A) (5) BY UNILATERALLY CEASING UNION DUES**

Contrary to Respondent's Exception, ALJ Carissimi properly found that the Employer violated Section 8(a) (5) when it ceased deducting union dues. The local agreement between the Union and Respondent expired on December 2010. Jt. Exh. 1. On May 22, 2012, the parties executed a memorandum of understanding that the parties would continue to honor the dues check-off provision until either a new agreement eliminated dues checkoff or a valid impasse was reached.(G.C.Exh. 59) There was no evidence presented that the parties ever rescinded this agreement.

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<sup>5</sup> See also Children's Mercy Hospital, 311 NLRB 204 (1993) finding discharge for falsification of record and misrepresentation of the facts was lawful.

<sup>6</sup> It is worthy to note that ALJ Carissimi observed that unlike the instant matter the cases cited by Respondent did not involve the disciplining of employees for the content of a grievance. ALJD p. 23, lines 33-34.

Respondent asserts that it sent the Union notice on November 19, 2012 that it would cease deducting dues on January 1, 2013. R. Exh. 35. ALJ Carissimi credited Union President Otis Brown's testimony that he never received the facsimile notice. ALJD p. 39 lines 16-20; R. 35, 36. Brown's testimony was supported by Respondent's bargaining notes for November 26, 2012. The notes indicate Brown informed Respondent's bargaining representative that he had not received a fax letter. Significantly, Respondent's bargaining notes are devoid of any evidence that Respondent discussed the contents of the letter, nor was there any witness testimony that the contents of the letter were discussed at any meeting. R. Exh. 36.

Brown testified that he first became aware in January 2013 that Respondent had ceased checking off dues. At that time, Union Vice-President Prentis Hubbard notified him that bargaining unit employees had reported that their dues were no longer being deducted. Tr. 953. By this time, the Union was faced with a fait accompli. ALJD p. 41, line 13-16. The Board charge was filed by the Union several weeks later.

While Respondent contends that the Union waived its right to bargain over the change, the ALJ correctly applied Board precedent that a waiver of statutory rights must be clear and unmistakable. Metropolitan Edison Co. v. NLRB, 460 U.S. 693 (1983); Provena St. Joseph Medical Center, 350 NLRB 808 (2007). These cases note that "Waivers can occur in any of three ways: by express provision in the collective bargaining agreement, by the conduct of the parties, bargaining history and action or inaction), or by a combination of the two." ALJD p. 40, line 46-47, p. 41, line 1-4.

ALJ Carissimi applied this standard and found that the Union did not waive its rights. Id. p. 41, line 6-11. There was no express collective bargaining provision that

established that the Union waived the dues-checkoff provision; there was no verbal or written agreement that the Union waived its right; and as already noted, ALJ Carissimi determined that Brown was unaware of any notice to cease dues check-off. Equally important, as noted by the ALJ, when an employer, as in the instant case, merely informs a union of a course of action that the employer will take, it does not constitute meaningful notice and an opportunity to bargain. General Die Casters, Inc., 359 NLRB No. 7, slip op. at 17 (2012); Ciba-Ceigy Pharmaceutical Division, 264NLRB 1013, 1017 (1982), enf'd. 722 F. 2d 1120 (3d Cir. 1983). ALJD p. 41, line 17-21.

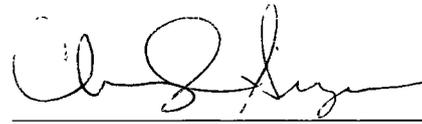
Finally, Respondent argues that the Board's recent decision in WKYC-TV, Inc. 359 NLRB No. 30 (2012), is invalid because the Board did not have a proper quorum. ALJ Carissimi properly dismissed Respondent's contention and ruled in favor of the Board's established practice of continuing to follow Board law until the Supreme Court reverses it. Waco, Inc. 273 NLRB 746, 749 fn. 14 (1984).

### **CONCLUSION**

On the basis of the entire record, and specifically the facts and applicable case law cited herein, Counsel for the General Counsel respectfully requests the Board to overrule Respondent's Exceptions in their entirety and find that Respondent violated Section 8(a)(1), (3) and (5) of the Act.

Dated at Cleveland, Ohio, this 7<sup>th</sup> day of February 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cheryl Sizemore". The signature is fluid and cursive, with a large initial "C" and "S".

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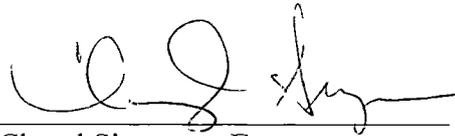
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**CERTIFICATE OF SERVICE**

Copies of the Answering Brief to Respondent's Exceptions to Administrative Law Judge Mark Carissimi's Decision were served by electronic mail on the following individuals this 7<sup>th</sup> day of February 2014:

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