

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROCHESTER GAS & ELECTRIC CORPORATION,

Respondent,

and

LOCAL UNION 36, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS,  
AFL-CIO,

Charging Party.

Cases 03-CA-075635  
03-CA-081230

**CHARGING PARTY'S CROSS-EXCEPTIONS TO THE  
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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Local Union 36, International Brotherhood of Electrical Workers, AFL-CIO, (“Charging Party” or “Union”), by its attorneys, Blitman & King LLP, pursuant to Sections 101.11(b) and 102.46 of the Rules and Regulations of the National Labor Relations Board, cross-excepts to the decision of the Administrative Law Judge dated January 8, 2014 in the above matter, in the following respects only:

1. The decision to reject “the Union’s argument in its brief that the Union did not contractually waive its right to bargain about the decision to subcontract” because that argument was an attempt to “enlarge upon or change the General Counsel’s theory of the complaint.” ALJ Decision at 17 n.4; GC-1(s) ¶¶ 14-15, 36 (Respondent’s affirmative defense that Union necessarily waived its right to bargain over the effects of subcontracting because it waived its right to bargain over subcontracting decisions).

2. The findings that “Respondent had the right to subcontract [bargaining unit work]” and that “the language of the parties’ contract . . . gives the Respondent the right to unilaterally subcontract unit work.” ALJ Decision at 17, 21.

3. The recommendation that Respondent be ordered to pay affected employees as a result of its failure to engage in effects bargaining “the amount of overtime pay the employees would have earned but for the subcontracting of work they were qualified to perform,” limited in part by the amount of subcontractor wages paid, instead of the amount of their normal wages as required by Transmarine Navigation Corp., 170 NLRB 389 (1968), from 5 days after the date of the Decision until the occurrence of the earliest of the four enumerated conditions in Transmarine. ALJ Decision at 25, 26.

4. The finding that “[i]n a letter dated March 20, [2012] [Company representative Thomas] Cammuso sent detailed information to the Union which the Union agrees satisfied the request for information set forth in its August 29[, 2011] letter” and that “the Union agrees that it has received the information set forth in [its] August 29[, 2011] letter which is the basis for the alleged violation.” ALJ Decision at 11, 24.

5. The finding that “[i]n mid to late 2010, the Union requested information concerning subcontracting and the Employer sent responses which included the specific information requested.” ALJ Decision at 12.

6. Allowing into evidence under the business records exception, over the Union’s objection, Respondent’s Exhibits 32 through 40, 44 through 47, 49, 50, 52, 54, 55, 57, 60 and 63, which are copies of “status of union contractors on Iberdrola USA property” documents that it asserts were sent to the Union. See Resp. Exh. 32 and Tr. 1056-1057.

Arguments and citations to authority and the record in support of the above cross-exceptions 1 through 6 are contained in the Charging Party’s Brief in Support of Cross-Exceptions submitted herewith.

Respectfully submitted,

Dated: February 19, 2014

s/ James R. LaVaute  
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**CERTIFICATE OF SERVICE**

James R. LaVaute, attorney for the charging party in the above captioned matter, certifies that on February 19, 2014 a copy of the within Cross-exceptions to the decision of the Administrative Law Judge was served by electronic mail upon Respondent's attorneys and upon Region 3:

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