

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14**

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CONSOLIDATED COMMUNICATIONS D/B/A	)	
ILLINOIS CONSOLIDATED TELEPHONE	)	
COMPANY,	)	Cases 14-CA-094626
	)	and 14-CA-101495
and	)	
	)	
LOCAL 702, INTERNATIONAL	)	
BROTHERHOOD OF ELECTRICAL	)	
WORKERS, AFL-CIO.	)	
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**RESPONDENT'S REPLY BRIEF TO CHARGING PARTY'S  
ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS**

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Respondent Consolidated Communications, Inc. (“Consolidated” or “the Company”) responds to the Charging Party Union’s (“Union”) answering brief to Consolidated’s Exceptions to Decision of Administrative Law Judge and Proceedings and brief in support thereof as follows:

**I. THE UNION ADVANCES A NUMBER OF ERRONEOUS AND MISLEADING ARGUMENTS IN AN ATTEMPT TO SUPPORT THE ALJ’S ANALYSIS**

The Union makes several erroneous and misleading arguments in its attempt to convince the Board that Hudson, Weaver, Maxwell and Williamson were engaged in no more than “fervent” striker activity. Although it is not feasible to highlight all of these arguments given the page constraints proscribed by the Rules, Consolidated asserts that a fair reading of the actual record (rather than the record as mischaracterized by the Union) demonstrates the substantial errors made by the Union in its attempt to support certain ALJ findings where there is simply no factual or logical support and which, accordingly, should be overturned.<sup>1</sup>

**A. The Video Evidence Cited By The Union Does Not Help The General Counsel Carry Its Burden Of Proof That The Incidents At Issue Did Not Occur**

Regarding the Sarah Greider incident, Greider testified Hudson and Weaver “blocked” her in, leaving her no place to go, and Hudson “stopped and started and stopped and started” on multiple occasions. Tr. 1054-57, 1079. Rich testified Hudson was “barely moving” and at the time the incident occurred, texted Greider, saying “I just saw what Pat Hudson did to you. I can’t believe she did that.” Tr. 1121-22. Hudson and Weaver did not “recall the event.” Tr. 601-04, 768. The Union attempts to create support for Hudson and Weaver by asserting that the “video” does not show Hudson’s car stopping and starting in front of Greider and that it “shows

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<sup>1</sup> Contrary to the Union’s attempt to frame the issues presented by Consolidated as primarily “credibility resolutions,” Consolidated’s exceptions to the ALJ’s findings are largely based upon the ALJ’s incorrect and inappropriate baseline assumptions and/or implicate conclusions made by the ALJ where no finding or evidence supports these conclusions.

Weaver some distance behind Greider.” U-Br. P. 9, 28, 53-54. Despite the Union’s characterization, no party seriously disputes the 16 second portion of video (seven seconds of which were cited by the Union) captures only a small portion of the incident, as the videographer did not film further down the road where Greider testified that the majority of the event took place. R-Ex. 1 at 10:03:41; JT-Ex. 7; Tr. 1057, 1069-70.<sup>2</sup> Further, even the 16 seconds indicates that Hudson *did* apply her brakes in front of Greider (R-Ex. 1 at 10:03:41-57), for which no explanation was offered. Obviously, the remainder of the incident took place off camera, and the Union’s attempt to use the 16-second video to characterize conduct that clearly took place off camera is misleading and should be rejected. In fact, using an extrapolation similar to the one the Union suggests, if Hudson stopped once within the first seven seconds of Greider pulling out (R-Ex. 1 at 10:03:50-57), and the event took 60 seconds, it would support that Hudson stopped during the 60-second period multiple times as Greider testified.

Further, the video does not support the Union’s *post-hoc* argument that Hudson and Weaver did not coerce or intimidate Greider because a Huffmaster security guard did not act. U-Br. P. 28. Putting aside that it is unclear what the Huffmaster security guard could have done in response to Hudson’s and Weaver’s conduct, the video does not show Huffmaster Security acting in a way which “strongly suggests that nothing happened.” *Id.* at 29. What the video shows is that the security guard on the scene was walking away from the road towards the building. R-Ex. 1 at 10:03:50-57. Thus, he was not in a position to see what occurred down the road and react even if he could.

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<sup>2</sup> The Union also seeks to discredit Greider’s testimony, as the ALJ did, by arguing that in her report, Greider failed to make mention of the fact that Hudson stopped and started multiple times. U-Br. P. 28. As an initial matter, it is unreasonable for the Union to infer that Greider’s handwritten report of the incident must mirror the more extended live testimony she provided. Moreover, there is no meaningful inconsistency between “stopping and starting” (her testimony) or “refused to move or moved very slowly,” which appeared in her report. GC-Ex. 12.

Regarding the Rankin incident, the Union's attempt to rely on the video is again unsupported. The Union cites to 34 seconds of a strike-line video (U-Br. P. 60), but again the video does not support that there was no misconduct. It is undisputed by the participants that the majority of the incident (including Hudson swerving at Rankin as asserted by the Company) took place further down 17<sup>th</sup> Street (Tr. 466-472, 481, 623-24, 788-793, JT-Ex. 7(a)), outside of the area that was filmed. Indeed, Hudson testified that the incident lasted a "few minutes" (Tr. 793), so it is obvious that the Union's citation to 34 seconds of tape near the entrance is not determinative. In fact, the video cited by the Union does show Hudson's car inexplicably stop in front of Rankin in the middle of the road despite her admission that there were no cars in front of her. Tr. 842-43.

**B. The Union's Attempt To Excuse Hudson's Conduct Based Upon Unspecific "Crowded Conditions" Should Be Rejected**

As previously noted, Greider's and Rich's testimony that Hudson engaged in an improper blockade of Greider is not contested (Hudson only testified that she does not "remember" such an incident). Tr. 768. However, in an attempt to excuse Hudson's conduct as to the Rankin and Greider incidents, the Union, relying on witness Rich's credibility (the same witness the Union also attempts to discredit), argues that, "Rich agreed that 17th Street was like a parking lot where you drive slowly." U-Br. P. 29; *see also* U-Br. P. 34. Hudson, however, did not testify that anyone was ever in front of her in either incident, and Rich's characterization of the conditions on 17th Street does not explain why Hudson would have repeatedly stopped on the roadway in front of Greider except to harass her. This is, in fact, exactly the way Rich described Hudson's conduct at the time the Greider incident occurred, stating that Hudson was driving in a manner to keep Greider from proceeding rather than as one would in a shopping center. Tr. 1166-67. Nor do the "crowded conditions" explain why

Hudson stopped and swerved towards Rankin, where both she admitted that there was nothing in front of her (Tr. 842-43), and witnesses Rich, Dasenbrock and Rankin all testified that they did not see anything in front of Hudson's car and that there was no reason for her to stop, swerve, and drive so slowly. Tr. 484, 1166, 1182-83.

**C. The Union's Attempts To Discredit The Objective Third-Party Witness Testimony Should Be Disregarded**

In attempting to justify the ALJ's completely unsupported finding of animus of third-party witnesses (*see* ALJ Decision P. 7, 16), the Union splits hairs with the testimony of neutral witnesses Rich, Dasenbrock and Walters as to the Rankin incident, claiming that they could not agree on the "critical claim" as to whether Hudson swerved at Rankin. U-Br. P. 35-36, 60-61. It is common sense and well-accepted that when nonparticipant witnesses view an incident from afar and testify to the incident eight to nine months later, it is unlikely that they are going to recount everything in the exact same manner. Importantly, as to the Rankin incident, the three neutral witnesses—Walters, Rich and Dasenbrock—testified and agreed that Hudson impeded Rankin's progress and that she attempted to block his path. Tr. 1028, 1032, 1122-24, 1134, 1165, 1179-1181, 1183, 1195, 1198. Whether they remember seeing Hudson use precisely the same driving maneuver in blocking Rankin is irrelevant (and in fact shows that they each provided independent and forthright testimony), as they each recall seeing Hudson intentionally impede Rankin's progress as he attempted to pass, which the General Counsel failed to show was not intimidating or coercive under the Act. It is error for the ALJ to have disregarded their neutral testimony on the basis of alleged inconsistencies which, if inconsistencies at all, were minor in nature in the context of their confirmation of Hudson's misconduct.

**D. The Union Advances Baseless Arguments That Non-Supervisors Rich's And Greider's Testimony Was The Result Of Anti-Union Animus**

The Union advances illogical and unsupported arguments in an attempt to bolster the ALJ's unsupported finding that Rich's and Greider's testimony as to Hudson's conduct directed towards Greider was motivated by animus related to the strike. U-Br. P. 29. As to Greider, the Union argues that because she was "nervous" driving through the picket line and referred to Hudson and Weaver as "bitches" during the blocking incident, she had "substantial hostility." *Id.* Not only does this argument ignore the evidence (not refuted by Hudson) that Greider never had any unpleasant interaction with Hudson prior to the incident in question (Tr. 1085-86), it also belies common sense. Surely, it is understandable that Greider would be nervous crossing the picket line by herself when she had witnessed what the Mattoon Chief of Police described as a "chaotic" scene in which "arrests could have been made." Tr. 540, 575. Under the Union's theory, a non-striking employee that is nervous about crossing the line is presumed (without evidence) to be hostile towards the strikers. Such an assumption is not justified, especially when the only third-party witness to testify regarding the incident (Rich) supported Greider's account by testifying that Hudson barely moved in front of Greider, and sent her a text message within minutes of viewing the incident, that "I just saw what Pat Hudson did to you. I can't believe she did that." Tr. 1059, 1118-22, 1167. Under the Union's theory, evidently, the ALJ should examine the level of fervency of the strikers, as that would indicate their "hostility" and anger towards non-striking employees when they cross the picket line. Obviously, the ALJ did not do this. The Union simply is again arguing both sides of the coin- heads, the Union wins; tails, the Company loses.

As to Rich, there is absolutely no reason to discount her testimony. The Union argues "(t)he fact that Rich invited Hudson to her wedding 'years ago' does not mean that Rich was not

also angry about the strike.” U-Br. P. 29. However, the Union mischaracterizes Rich’s testimony, which is that Hudson is friends with Rich (not refuted by Hudson) and actually attended her wedding. Tr. 1116. Moreover, there is absolutely no evidence that Rich was “angry” (or nervous) about the strike, and it was the General Counsel’s burden to prove she was affected by bias by a means other than unsupported assumptions.

**E. The Union Advances Several Unsupported Arguments In Support Of Hudson’s and Weaver’s Illogical Explanation Of The Conley Incident**

The Union advances several arguments that fail to withstand scrutiny in its attempt to support the ALJ’s numerous errors in analyzing the Conley incident. Despite the Union’s statement that Weaver and Hudson provided “consistent testimony” as to this incident (U-Br. P. 29-30) as set forth in Consolidated’s initial brief, this simply is not the case. R-Br. P. 11 n. 6, 50. The Union also attempts to justify Hudson’s passing of Conley by arguing that Hudson wanted to stay with Weaver after Weaver had passed Conley. U-Br. P. 31. However, Hudson admitted that it was her idea to conduct ambulatory picketing, and she undertook to do so without even communicating with Weaver or having knowledge that Weaver would follow her. Tr. 774, 834. Accordingly, if her intent was to engage in legitimate ambulatory picketing, it makes no sense why she, a few miles down the road, would abandon the purported ambulatory picketing based upon Weaver’s action in passing Conley.

The Union’s brief also advances several arguments that Weaver’s testimony was credible, including misrepresenting Weaver’s admission that she did not know whether or not a standard pickup truck (the type that Conley was driving) would or would not require a CDL (Tr. 656) (her purported reason for pulling up beside him). U-Br. P. 30. Further, the Union’s argument that Weaver’s testimony as to the amount of time she drove beside Conley “was consistent,” is clearly in error. It is undisputed that Weaver initially claimed she drove alongside Conley for the

amount of time it takes to snap her fingers twice, but when questioned how such a short period of time was consistent with her testimony of having made eye contact with Conley and pulling ahead of him after having three or four cars coming behind her to pass, Weaver admitted that she was wrong, and it could not have been this short of time. Tr. 657, 696-97. Again, the Union is attempting to argue both sides of the coin, and if inconsistencies as those it attributes to Rich, Dasenbrock and Walters means the testimony has no value, that standard must also be applied to Hudson and Weaver.

In his analysis, the ALJ discredited Hudson's and Weaver's claims that Conley never was in the left lane attempting to pass Hudson and that Hudson did not block him (Tr. 617, 850) (ALJ Decision P. 12). This finding controls the case, and the issue becomes whether the blocking which the ALJ found, would tend to coerce and intimidate an employee attempting to go to work. As set forth in the Company's brief, the General Counsel has not shown that such conduct would not reasonably tend to coerce or intimidate and is therefore not protected under the Act.

**F. In An Attempt To Bolster The ALJ's Finding Which Are Devoid Of Record Support, The Union's Arguments Puts The Targets Of Hudson And Weaver In The Ultimate Catch 22**

To support the ALJ's finding that Hudson and Weaver's conduct did not reasonably coerce or intimidate, the Union argues "the importance of Conley and Rankin ... not pulling off earlier ... undermines their credibility." U-Br. P. 43. Conversely, when Greider and Conley used a means of escape to avoid Hudson's and Weaver's continued blockade, the Union argues the misconduct to which the victims were subjected did not last very long and therefore did not coerce or intimidate. When Greider took the first opportunity to avoid the blockade, the Union argues "at worst Greider was temporarily delayed for a few seconds." U-Br. P. 54. Similarly, the Union argues that Conley's actions in escaping the blockade are significant "because how long Conley was behind Hudson is relevant to whether she was blocking him." *Id.* at 31.

Obviously, the victim cannot win in this scenario, and regardless of what he or she does, the Union attempts to use the response to negate the “seriousness” of the offense. In reality, under a proper legal analysis, neither escape nor duration is an actual factor. The issue is whether the blockade of Greider, Rankin and Conley would reasonably tend to coerce and intimidate. In this case, the conduct towards each of the three targets would reasonably tend to coerce or intimidate.

**G. The Union’s Support of the ALJ’s Findings By “Blaming The Victim” During The Redfern and Rankin Incidents Should Be Rejected**

Consistent with the ALJ placing a duty on the targets of the strike misconduct to avoid the misconduct (*see* ALJ’s Decision P. 9-11, 13), the Union continues the theme of blaming the victims of the misconduct. As to the Redfern incident, the Union attempts to divert the Board’s attention from the fact that Williamson engaged in intentional misconduct by blaming Redfern for her understandable reaction to Williamson making contact with her mirror. U-Br. P. 38. Moreover, the Union attempts to perpetuate the duty to escape applied by the ALJ by arguing that Rankin should have been disciplined for his attempt to escape Hudson’s blockade. *Id.* at 61. This is a truly perverted analysis and effectively places a burden on the objects of the misconduct, who had no reason to know that they were going to be harassed, to have made decisions the ALJ and the Union’s counsel (with the benefit of hindsight and displaced from the emotional setting of a strike) apparently would have made in response to misconduct by strikers. The argument also strays far from the proper inquiry- whether the Disciplined Employees engaged in misconduct that would reasonably tend to intimidate or coerce- which they did.

**H. The Union Mischaracterizes The Chief Of Police’s Testimony Regarding The Surrounding Circumstances**

In attempting to refute the Company’s argument regarding the ALJ’s failure to consider all of the circumstances in which the alleged misconduct occurred, the Union argues that “(n)otably, the police did not make any arrests.” U-Br. P. 68. More notably, Mattoon Chief of

Police Branson specifically testified that the police department “could have made some arrests that morning.” Tr. 575. The fact that the police chose not to do so in its discretion does not mean that the strikers’ conduct did not heighten the coercive and intimidating effect of the Disciplined Employees’ misconduct.<sup>3</sup> The Union further attempts to argue that the picketers complied with the Chief’s instructions to get out of the street. U-Br. P. 5. The Union misconstrues Chief Branson’s testimony, as while they complied immediately after he spoke to them, after he went inside to speak to Company management, he found that they continued to walk across the road. Tr. 541; *see also* Tr. 548. Thus, the Union’s counsel’s attempts to mischaracterize the strike’s impact on the effect of the specific acts of misconduct by Hudson, Weaver and Williamson should be disregarded.

**I. The Union Fails To Rebut Respondent’s Exceptions To The ALJ’s Error In Placing Probative Value On The Reporting Of Incidents Through Company-Provided Channels Rather Than By Filing Police Reports**

The Union contends the ALJ’s consideration of the targets’ lack of contact with the police “is one of many factors properly considered in resolving credibility.” U-Br. P. 41.<sup>4</sup> The Union also argues that the Company’s failure to follow the Huffmaster procedures is relevant to credibility because if the incidents had occurred, or if they were as serious as the Company asserts, it would have called the police. *Id.* at 41-42. In advancing these arguments, the Union misconstrues the evidence and relevant testimony by attempting to make the Huffmaster

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<sup>3</sup> Indeed, after the strikers reverted to their prior conduct, Chief Branson choose to station himself outside of the facility for a period of time during the strike “to get a handle on things.” Tr. 564-65; R-Ex. 1 at 10:18:30.

<sup>4</sup> *See* ALJ’s Decision (“(i)n making credibility resolutions regarding this incident, it is very significant that Conley did not contact the police.” P. 12 (emphasis added)); (the ALJ “rel[ied] in part of the fact that Greider did not file a police report as she had been instructed prior to this incident” P. 8); (regarding the Rankin incident, the ALJ relied “in part of the fact that no police reports were filed for their conduct, such as stop/start[ing] in front of vehicles, which is clearly illegal.” P. 14); and (the ALJ found that Redfern did not call the police after Manager Sam Jurka advised her to do so. P. 16).

procedures something they were never intended to be (*see* Consolidated’s Brief P. 38-42), and the argument that employees lacked credibility because they *followed* the Company’s instructions via Patrem (“report any incidents to the Command Center...”) <sup>5</sup> and the Huffmaster procedures, which offered several options, including reporting the incident to the Company by “immediately notify[ing] security personnel and complet[ing] an incident report” (Tr. 180-81, 486; GC-Ex. 20, 21), is nonsensical. Following instructions- as these employees did by reporting the incidents to Company management and completing a Huffmaster report (*see* GC-Ex. 13; R-Ex. 7, 9; Tr. 473, 872-83, 895-96, 996, 988-90, 1059-60) does not undermine credibility.

The Union also incorrectly argues that because Croy and Jurka spoke to Chief Branson, the Company should have called the police “about any incidents in question.” U-Br. P. 41. But, neither Croy, Jurka, nor Whitlock needed to call the police because the Company’s plan was for employees involved in any incidents to call the Company’s Command Center and then fill out an incident report. GC-Ex. 20; Tr. 1216. <sup>6</sup> Finally, both Charging Party and the ALJ ignore the fact that Company management representatives Jurka and Croy did call the police repeatedly on Monday, December 10, regarding the strikers’ conduct. <sup>7</sup>

In light of the numerous errors, the ALJ’s decision should be reversed, and appropriate relief should be granted.

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<sup>5</sup> Company manager Whitlock testified that first step in addressing strike line misconduct was for anyone involved in an incident to call the Command Center and then fill out an incident report. Tr. 1216.

<sup>6</sup> As the Union argues that Maxwell was justified in not calling the police following his purported injury (unsupported by any evidence other than his self-serving story) (U-Br. P. 27), there could be several reasons for the Company or the victims not to contact the police, including a desire not to escalate the situation. Indeed, Redfern testified that she not call the police following Williamson’s misconduct for that very concern. Tr. 993.

<sup>7</sup> In fact, the Union stressed how often Consolidated manager Croy contacted the police. *See* U-Br. P. 5, 41-43.

Respectfully submitted, this 28th day of February, 2014.

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## CERTIFICATE OF SERVICE

I certify that on this 28th day of February, 2014, I caused the foregoing to be electronically filed the with the National Labor Relations Board at <http://nlrb.gov> and a copy of same to be served via electronic mail to the following:

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