UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROY SPA, LLC,	)	
	)	
Respondent,	)	
and	)	Case No.: 19-CA-83329
	)	
INTERNATIONAL BROTHERHOOD OF,	)	
TEAMSTERS LOCAL 2,	)	
	)	
Charging Party.	)	

RESPONDENT ROY SPA, LLC'S EXCEPTIONS TO THE SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respectfully submitted by:

ROY SPA, LLC

Michael E. Avakian

The Center on National Labor Policy, Inc.
5211 Port Royal Road, Suite 610
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(703) 321-9181

March 28, 2014

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

ROY SPA, LLC,	)	
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Respondent,	)	
and	)	Case No.: 19-CA-83329
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INTERNATIONAL BROTHERHOOD OF,	)	
TEAMSTERS LOCAL 2,	)	
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Charging Party.	)	

EXCEPTIONS OF RESPONDENT ROY SPA, LLC
TO THE SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE
LAW JUDGE DENYING RESPONDENT'S APPLICATION
FOR ATTORNEY'S FEES AND EXPENSES
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

Comes now Respondent Roy Spa, LLC ("Roy Spa" or "Company"), pursuant to Rule 102.46 of the Board's Rules and Regulations, and excepts to the Decision of the Administrative Law Judge (JD(ATL)-12-14) in the above styled case.

Exception 1. Respondent excepts to the ALJ's failure to find that Roy Spa was the "prevailing party" in the underlying action, that its net worth was less then $7 million, and that it had less than 500 employees at all relevant times.

Exception 2. Respondent excepts to the ALJ's failure to find that Roy Spa's request for $64,956.25 in attorney's fees and $3,320.65 in expenses, were reasonable.

Exception 3. Respondent excepts to the ALJ's failure to find at 2 n.1, that an attorney's fee rate for the specialized nature of the case of $475/hour was warranted.

Exception 4. Respondent excepts to the ALJ's pre-Decision ruling that Section 102.150 of Board's Rules and Regulations did not apply to the General Counsel's request for an extension of time to file a motion to dismiss the EAJA petition more then 35 days after the EAJA Application was filed.

ALJD 2 ll.10-14, allowing him to grant the extension and consider the General Counsel's Motion to dismiss.

Exception 5. Respondent excepts to the ALJ's failure to find that the General Counsel failed to prove Roy Spa was a successor employer as alleged in the Complaint.

Exception 6. Respondent excepts to the ALJ's failure to find that the General Counsel introduced no evidence at the hearing to establish that hair salon services provided by Roy Spa to AAFES was vital to national defense under the national defense standard.

Exception 7. Respondent excepts to the ALJ's failure to find that the General Counsel introduced no evidence at hearing from military personnel that the hair salon services provided by Roy Spa to AAFES was vital to national defense under the national defense standard.

Exception 8. Respondent excepts to the ALJ's failure to find that the General Counsel never explained what the national defense standard in fact, is.

Exception 9. Respondent excepts to the ALJ's finding at 3 ll.29-31, that the Board had found jurisdiction over barber shops on military bases primarily under the national defense standard rather then the discretionary retail standard.

Exception 10. Respondent excepts to the ALJ's finding at 3 ll.37-40, that the Board's finding the national defense standard was not applied in recent cases such as Fort Houston Barber Shop, 255 N.L.R.B. 1248 (1981), and Pentagon Barber Shop, 255 N.L.R.B. 1248 (1981), with less then $500,000 in sales, "was sufficiently distinguishable" from older cases such as Gina Morena Enterprises, 181 N.L.R.B. 1007 (1970), and Spruce Up Corp., 194 N.L.R.B. 841, 843 (1972), where the business had met the $500,000 commerce standard.

Exception 11. Respondent excepts to the ALJ's failure to find that in no case has the Board exercised national defense standard jurisdiction over a hair care facility on a military installation that did not meed the discretionary commerce sales standard.

Exception 12. Respondent excepts to the ALJ's finding at 3 ll.40-42, that "reasonable minds" could differ whether the national defense standard should apply any differently to Roy Spa at Malmstrom AFB, because "the Board had never addressed the exact factual situation here."

Exception 13. Respondent excepts to the ALJ's finding at 3 l.44, that the denial of an EAJA award where "precedent was not so factually identical as to be 'conclusive' of a particular issue" is "substantially justified" decisionmaking under the EAJA.

Exception 14. Respondent excepts to the ALJ's finding at 3 ll.45-46, that an EAJA award can be denied as "substantially justified where 'at least one permissible view of the evidence shows a reasonable basis in law and fact."

Exception 15. Respondent excepts to the ALJ's failure to find at 3-4, that the General Counsel introduced no evidence to show why the national defense standard could apply to the facts involving Roy Spa.

Exception 16. Respondent excepts to the ALJ's failure to find at 4 that the General Counsel identified no facts to show why the law under the national defense standard should be applied differently to the facts in this case then in all other cases.

Exception 17. Respondent excepts to the ALJ's failure to find at 4 that no material factual distinctions between the instant facts with the facts in "older" Board cases applying national defense jurisdiction, were ever identified by the General Counsel.

Exception 18. Respondent excepts to the ALJ's failure to find the General Counsel never argued that his position sought to extract a new legal ground for national defense jurisdiction.

Exception 19. Respondent excepts to the ALJ's failure to find the General Counsel never introduced any evidence that a labor dispute at Malmstrom Air Force base would impact any activity on the base.

Exception 20. Respondent excepts to the ALJ's failure to find at 4 that the question of national defense jurisdiction was challenged at all times by Respondent, and upon which Roy Spa prevailed on in both law and fact.

Exception 21. Respondent excepts to the ALJ's finding at 4 ll.9-13, that the General Counsel was substantially justified in issuing a complaint and litigating the issue of jurisdiction when no evidence to sustain national defense jurisdiction was ever introduced at the hearing by the General Counsel.

Exception 22. Respondent excepts to the ALJ's finding at 4 l.15 that the General Counsel was "substantially justified in litigating this matter."

Exception 23. Respondent excepts to the ALJ's recommendation that the Application for an Award of Fees under the EAJA be dismissed

Exception 24. Respondent excepts to the ALJ's failure to find that a cost of living increase in attorneys' fees is necessary under the Board's Rules and Regulations.

Exception 25. Respondent excepts to the ALJ's failure to find that the General Counsel's failure to file an Answer Roy Spa's Application for EAJA fees within 35 days of filing under Section 102.150 of the Board's Rules and Regulations should be treated as consent to the award requested.

Exception 26. Respondent excepts to the ALJ's failure to find that the General Counsel's finding that the General Counsel's showing of jurisdiction was "close." ALJSD 4 l.9.

Exception 27. Respondent excepts to the ALJ's failure to explain why cases involving national defense jurisdiction was "close" or what he meant by the matter being "close." ALJSD 4.

Exception 28. Respondent excepts to the ALJ's failure to find that the General Counsel's failure to explain what facts could have made his decision go "either way." ALJSD 4.

Exception 29. Respondent excepts to the ALJ's failure to find that the Board's recent cases are "sufficiently distinguishable from the facts here." ALJD 3 ll.38.

CONCLUSION

For the foregoing reasons, Respondent Roy Spa, LLC respectfully requests that the Board grant these Exceptions to the Supplemental Decision of the Administrative Law Judge.

Respectfully submitted,

ROY SPA, LLC

BY: /s/ Michael E. Avakian
Michael E. Avakian

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Dated: March 28, 2014

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the RESPONDENT'S EXCEPTIONS TO SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW JUDGE was mailed to the following persons on this the 28th day of March 2014:

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/s/ Michael E. Avakian