

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

UNITED HOISTING & SCAFFOLDING, INC.

and

Case 29-CA-105701

**INTERNATIONAL UNION OF ELEVATOR
CONSTRUCTORS, LOCAL NO. 1, AFL-CIO**

**COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Administrative Law Judge Lauren Esposito issued a Decision in the above-captioned matter on January 31, 2014, finding the Complaint's allegations appropriate for deferral to the parties' grievance-arbitration procedure and dismissing the Complaint.

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Counsel for the General Counsel takes exception to the Administrative law judge's findings and conclusions, as follows:

<u>Exception #</u>	<u>Page</u>	<u>Lines</u>	<u>Exception</u>
1.	6	30-34	The ALJ erred in finding that Respondent's deferral defense was raised in a timely fashion, and in allowing the case to be fully litigated before ruling to defer the matter four months later.
2.	7	5	The ALJ erred in stating that the issue is whether Respondent's drug-testing policy "violated the [parties'] agreement."
3.	8	6-24	The ALJ erred in finding that resolution of the Complaint's allegations require interpretation of contract provisions, including the management's rights clause, and are therefore "appropriate for the special interpretive competence of an arbitrator."
4.	8	41-51 (fn. 8)	The ALJ erred in concluding that deferral of a unilateral-change allegation does not involve consideration of whether a party waived its right to bargain over the subject matter of the unilateral change.

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| 5. | 9 | 6-13 | The ALJ erred in failing to find that the bargaining history in this case, including Respondent's "consciously yielding" its opportunity to bargain during contract negotiations over the specific subject matter of the unilateral change, waived Respondent's "prerogative" to make unilateral changes with respect to that subject matter. |
| 6. | 8
9
and 10 | 9
13-16
4-6 | The ALJ mischaracterized the issue as "whether contract provisions implicated by the grievances" in this case are "clear and unambiguous," using the phrase applied to such contract terms as wages. |
| 7. | 9 | 37-51
(fn. 9) | The ALJ erred in finding "not pertinent" the language in <u>Johnson-Bateman Co.</u> , 295 NLRB 180, 186 (1989), that assessing a unilateral-change allegation in the face of a management's rights clause does not present "solely a matter of contract interpretation" beyond the scope of the Board's consideration. |
| 8. | 10 | 6-7 | The ALJ erred in finding the unfair labor practice dispute herein "well-suited to resolution through arbitration." |
| 9. | 10 | 41-42 | The ALJ erred in concluding that the unfair labor practice allegations are appropriate for deferral to arbitration. |
| 10. | 11 | 4-10 | The ALJ erred in dismissing the Complaint. |

The specific grounds and authorities for these exceptions are set forth in the attached Brief.

Dated this 1st day of April, 2014.

Respectfully submitted,



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