



**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
**Region Four**  
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April 10, 2014

**VIA E-FILING**

Gary W. Shinnars,  
Executive Secretary  
National Labor Relations Board  
Room 11602 East  
1099 14<sup>th</sup> Street, N.W.  
Washington, DC 20570-0001

Re: Management & Training Corporation  
Cases 04-CA-095456, 04-CA-097114  
and 04-CA-104790

Dear Mr. Shinnars:

Attached please find Counsel for the General Counsel's Reply Brief to Respondent's Answering Brief to Counsel for the General Counsel's Cross-Exceptions to the Decision of the Administrative Law Judge in the above-captioned matter. Copies of this document have been served on the persons below by e-mail.

Very truly yours,

JENNIFER SPECTOR  
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 4**

MANAGEMENT & TRAINING CORPORATION

and

SERVICE EMPLOYEES INTERNATIONAL UNION  
LOCAL 668

Cases 04-CA-095456  
04-CA-097114 and  
04-CA-104790

**COUNSEL FOR THE GENERAL COUNSEL'S  
REPLY BRIEF**

Respectfully submitted,



JENNIFER RODDY SPECTOR

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National Labor Relations Board

Fourth Region

615 Chestnut Street, Suite 710

Philadelphia, Pennsylvania 19106

Dated: April 10, 2014

Counsel for the General Counsel, pursuant to Section 102.46 of the Board's Rules and Regulations, hereby files a Reply Brief to Respondent's Answering Brief to CGC's Cross-Exceptions to the Decision of Administrative Arthur Amchan (herein "Answering Brief") in the above-captioned matter, and states as follows:

**Allegations involving threat to grievant Heather Rebarchak**  
**(Cross-Exceptions 1 and 8-10)**

In its Answering Brief, Respondent points out repeatedly that *Cook Paint & Varnish*, 246 NLRB 646 (1979) was not enforced in the D.C. Circuit. *Cook Paint & Varnish v. NLRB*, 648 F.2d 712 (D.C. Cir. 1981). Of course, this should have been immaterial to the Judge's Decision; since the case has never been overruled by the Supreme Court nor the Board, it remains binding precedent. *D.L. Baker, Inc.*, 351 NLRB 515, 529 at fn. 42 (2007).

However, the Board could find a violation here without employing the sort of per se rule banning post-disciplinary interviews the D.C. Circuit found troubling. Respondent coupled its demand for a witness statement with a threat to impose additional discipline on the employee whether she complied or not – unless, of course, she withdrew her grievance over her prior discipline. (ALJD 4:40-44; GCX 12/RX14; GCX 13) In these circumstances, Respondent's "request" for a witness statement is nothing more than a demand that the grievant forego her protected right to pursue her claim via the grievance process, "or else." Setting aside the question of whether Respondent is generally entitled to make demands of grievants for post-disciplinary witness statements in all circumstances, where such demands are coupled with threats which explicitly discourage the grievants from engaging in protected activity, they are unlawful. *NLRB v. City Disposal System*, 465 U.S. 822, 835-836 (1984); *833 Central Owners Corp.*, 359 NLRB No. 66, slip op. at 2 (2013). Accordingly, in the circumstances of this case,

the demand for a statement was coercive and chilled access to the grievance process, even assuming that in other circumstances requests to question witnesses could be lawful.

**Allegations involving Respondent's refusal to provide information  
and delay in providing information (Cross-Exceptions 2-7 and 11-17)**

Respondent argues in its Answering Brief that there is some significance to the fact that the Union, and not Respondent, raised some of the topics at the table that eventually resulted in the Union's information requests. There is no dispute about the facts, though Respondent's argument misses the mark. Respondent repeatedly, and admittedly, linked its proposal for a 0% wage increase to its 0% inflationary cap from the Department of Labor. (ALJD 2:32-33; RX 38; RX37; GCX 2) In an obvious attempt to test Respondent's willingness to move from its position, the Union raised various matters, including rumors concerning wage increases for non-unit employees, the possible application of under-run funds, and similar topics. The Union's questions went to Respondent's flexibility – or lack thereof – based on the 0% inflationary cap which Respondent cited as the basis for its proposal. Respondent made certain claims in response to the Union's questions: those increases were required by DOL, those under-run funds could only be applied with DOL's permission, there are now two pay scales, and other replies. (T. 21-22, 24-25, 29-32; GCX 15 pp. 2-3) When the Union sought to test those claims and ask follow-up questions, Respondent then asserted that those matters were irrelevant. (ALJD 3:1-47 through 4:1-14)

There is simply no authority for Respondent's assertion that only matters raised by an employer can prompt requests for information. The Union here is entitled to test Respondent's claims in order to make its own assessments about whether and how to respond to Respondent's proposals. *Kraft Foods N. America*, 355 NLRB 753, 755 (2010). This is the reason that when a

union is denied “information that it could use to understand, evaluate, and possibly rebut” an employer’s claims at the table, the refusal to provide information can preclude a lawful impasse. *National Extrusion & Mfg. Co.*, 357 NLRB No. 8, slip op. at 5-6 (2011), enf. sub nom. *KLB Industries*, 700 F.3d 551 (D.C. Cir. 2012).

Respondent also continues to attempt to defend its refusals to meet its obligations to provide relevant information to the Union by insisting that this is an “inability to pay” case, which, of course, it is not. Respondent’s repeated denials of having asserted an inability to pay are immaterial, as it was never alleged that they made such statements.

**Conclusion**

Counsel for the General Counsel respectfully submits that the Board should modify the Administrative Law Judge’s recommended Order, Findings, and Conclusions of Law consistent with Counsel for the General Counsel’s Cross-Exceptions.

Respectfully submitted,

Dated: April 10, 2014



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JENNIFER RODDY SPECTOR  
Counsel for the General Counsel