

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

<p><b>CORLISS RESOURCES, INC.,</b></p> <p style="text-align:right"><b>Respondent,</b></p> <p><b>and</b></p> <p><b>TEAMSTERS LOCAL 174, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS,</b></p> <p style="text-align:right"><b>Union.</b></p>	<p><b>Case Nos. 19-CA-093237 19-CA-093281 19-CA-102190 19-CA-104557 19-CA-105226 19-CA-106514</b></p>
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**CORLISS RESOURCES, INC.'S OPPOSITION TO GENERAL COUNSEL'S BRIEF IN  
SUPPORT OF THE UNION'S LIMITED EXCEPTIONS TO ALJ'S DECISION**

Dated: May 19, 2014

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## I. INTRODUCTION

Corliss Resources, Inc. (“CRI” or “Respondent”) submits this Brief in Opposition to the General Counsel’s Brief in Support of Teamsters Local 174’s (“Union”) Limited Exceptions to the Decision of the Administrative Law Judge (“ALJ”) pursuant to Section 102.46 of the National Labor Relations Board’s Rules and Regulations. CRI submitted its Brief in Opposition to the Union’s Limited Exceptions to the ALJ’s Decision on May 5, 2014.<sup>1</sup> CRI respectfully requests that the Board affirm those portions of the ALJ’s Decision excepted to by the Union.

## II. ARGUMENT

### **A. The ALJ correctly concluded that Dispatcher Randy Britt did not violate the Act when he called Brian Tilly and John Bobbitt “backstabbers.”**

General Counsel’s arguments regarding the alleged “backstabber” statements should be dismissed for all the same reasons as outlined in CRI’s Brief in Opposition to the Union’s Limited Exceptions. Additionally, General Counsel’s reliance on *House Calls, Inc.*, 304 NLRB 311, 313 (1991) and *Dauman Pallet, Inc.*, 314 NLRB 185, n.7 (1994) must be rejected. In fact, in *House Calls*, there was no allegation that the respondent called employee(s) “backstabber.” In *Dauman Pallet*, the co-owner asserted that an employee had “stabbed him in the back” by going on strike – it was directly tied to the employee’s union support and his protected activity. *Id.* Neither case cited by the General Counsel supports overturning the ALJ’s Decision regarding Britt’s “backstabber” comments.

In contrast to the cases cited by the General Counsel, Britt’s “backstabber” comments related to specific disputes unrelated to Union support or activity. Randy Britt (“Britt”) called

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<sup>1</sup> As an initial matter, CRI notes that the General Counsel did not file any exceptions to the ALJ’s decision. Instead, the General Counsel chose to file a Brief in Support of the Union’s Exceptions. Accordingly, the General Counsel’s Brief is limited to only those specific exceptions addressed by the Union. *See* Board’s Rules and Regulations, §102.46(g)(“[n]o matter not included in exceptions or cross-exceptions may thereafter be urged before the Board, or in any further proceeding.”); *see also* Board’s Rules and Regulations, §102.46(b)(2)(“[a]ny exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived.”).

Brian Tilly (“Tilly”) a “backstabber” because he was upset that Tilly had accused Britt of being a liar – not in response to Tilly’s Union support or activity.<sup>2</sup> ALJD 12:19-30; Tr. 372-73, 427-29, 1074-76.<sup>3</sup> Britt called John Bobbitt (“Bobbitt”) a “backstabber” because Bobbitt was questioning Britt’s dispatch decisions and antagonizing other drivers on a busy morning regarding which driver should leave the Sumner parking lot first. ALJD 12, n.27; Tr. 578-79, 1075-1076.<sup>4</sup> Neither “backstabber” statement related to Union support or activity.<sup>5</sup> ALJD 12:19-30, fn. 27.

**B. The ALJ correctly found that CRI met its burden in establishing that it would have changed Jeff Cope’s start time regardless of his Union support or activity.**

Despite the General Counsel’s attempts to argue that the belly dump truck assignment adversely affected Jeff Cope’s (“Cope”) hours, the evidence clearly established that CRI had a long-existing practice of starting the belly dump trucks earlier than the other dump trucks in order to verify the accuracy of its plant scales, among other reasons<sup>6</sup>, and that all drivers started earlier in the “summer” months.<sup>7</sup> ALJD 19:13-21; Tr. 802-04, 1044:15-1046:17. Cope

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<sup>2</sup> For purposes of this Brief, CRI accepts the ALJ’s finding that Britt used the term “backstabber” in his conversation with Tilly on March 6, 2013. ALJD 12:, fn. 25. See Tr. 1075-76.

<sup>3</sup> Citations to witness testimony contained in the official transcript of the proceeding are indicated as “(Tr. Page: Line).” Citations to exhibits are indicated as “CRI Exh. \_\_\_\_” or “GC Exh. \_\_\_\_.” Citations to the ALJ’s Decision are indicated as “ALJD \_\_\_\_.”

<sup>4</sup> The General Counsel’s argument that Bobbitt was commenting about seniority, which allegedly was “an ongoing subject of Union and employee concern at the time,” lacks merit. GC’s Brief p. 7. Contrary to the General Counsel’s arguments, there was no evidence that dispatching by seniority was an issue known to management as of March 6, 2013. See Tr. 1076:15-17. Allegations of “haphazard” dispatching do not infer a dispute of seniority. Britt’s “backstabber” comment to Bobbitt would more reasonably be interpreted by other drivers as responding to Bobbitt’s defiance to dispatch and disruption to the start of the day.

<sup>5</sup> Moreover, any 8(a)(1) violation would merely be cumulative and would not affect the remedy. See *George L. Mee Memorial Hospital*, 348 NLRB 327, n. 5(2006) (Board passed on finding additional 8(a)(1) violations because any remedy would have been cumulative and thus would not effectuate the purposes of the Act.)

<sup>6</sup> Another reason for earlier start times for the belly dump drivers was to allow them to get a head start stocking the plants first thing in the morning before the dump truck drivers arrived to be loaded with product. Tr. 802:13-803:11; Tr. 1044:15-1046:17.

<sup>7</sup> Moreover, all drivers’ start times fluctuated throughout the course of the year and from day to day. See CRI Exh. 46, Flanders’ Tripsheets; see also CRI Exh. 60, Tilly’s Tripsheets; see also CRI Exh. 1, Bobbitt’s Tripsheets; see also CRI Exh. 43, Vandyk’s Tripsheets. Drivers would consistently start earlier in the summer months (sometimes as early as 5:25 or 5:30) whereas drivers would start later in the winter months (sometimes as late as 7:30). See, e.g., CRI Exh. 46, Flanders’ Tripsheets: December 3, 2012 (77682) through January 31, 2013 (79259). However, during the busier summer months of June 2012 and June 2013, Flanders’ start times ranged from 5:30 to one at 7:15. *Id.*, June 1, 2012 (73663) through June 28, 2012 (73629) and June 1, 2013 (79449) through June 28, 2013

performed these duties when he drove a belly dump truck.<sup>8</sup> Tr. 523:2-20, 524:1-8, 803:12-18. Moreover, other drivers were assigned the earlier 5 a.m. start time, including George (Butch) Dye and Gary Hamilton. ALJD 19:19-20, n. 39. Darryle Jackson and Darrin Rousseau also started early when they drove belly dump trucks. Tr. 69:15-25, 802:13-20. General Counsel's witness Bobbitt also confirmed this established practice. ALJD 19:18-19; Tr. 563:12-24. He acknowledged that the belly dump truck drivers typically started around 5:00 a.m. in the summertime. Tr. 563:12-24. Moreover, the concrete business was picking up around the time of Cope's assignment to the belly dump truck. Tr. 1046:8-12, 799:7-24. CRI needed more material delivered to batch plants to keep up with the increased business. *Id.*

Finally, the General Counsel's opposition to the ALJ's Decision regarding Cope's start times change should be rejected because finding a violation would not affect the remedy. *See* ALJD 18:22-23, 33:43-34:1, 35:23-24; *Mee Memorial Hospital, supra*.

**C. The ALJ correctly concluded the General Counsel failed to establish its *prima facie* case regarding the alleged suspension of Dwane Crow.**

The ALJ correctly concluded that the General Counsel failed to establish her *prima facie* case with respect to Dwane Crow's ("Crow") alleged suspension. ALJD 25:37-27:1, n. 57. Only if the General Counsel establishes the *prima facie* case does the burden shift to the employer to demonstrate that the same action would have occurred even in the absence of the

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(78717). Similarly, Tilly's start times ranged from 6:15 to 6:45 in the slow winter months of December 2012 and January 2013. CRI Exh. 60, Tilly's Tripsheets: December 3, 2012 (76483) through January 31, 2013 (76522). But in the busier summer months of June 2012 and June 2013, Tilly's start times ranged from 5:25 to a few starting at 6:45. *Id.*, June 1, 2012 (73025) through June 29, 2012 (733457) and June 3, 2013 (79675) through June 28, 2013 (80719).

<sup>8</sup> As Britt explained, the "summer" hours (or busy time of the year) typically start in March or April, right around the time Cope was starting out in the belly dump truck. Tr. 1121:17-18. Cope also acknowledged that the dump trucks generally started earlier in the "summer" months compared to the "winter" months. Tr. 524:23-25. The General Counsel's allegation that Cope's start times changed a day or two after his assignment to the belly dump truck does not undermine the ALJ's conclusion.

protected activity. *Dish Network*, 359 NLRB No. 108, \*9-10 (2013); *Newcor, Inc.*, 351 NLRB 1034, n. 4 (2007).

Here, the General Counsel failed to establish by a preponderance of the evidence that management knew Crow was a Union supporter or that Crow was engaging in protected activity. Crow presented himself to management as opposed to the Union. ALJD 4:14-15, 24:25-32; ALJD 25-26; Tr. 233:14-25, 237:4-7; *see also* Tr. 1060:14-24. Crow also presented himself to management as being opposed to participating in a Board investigation. *Id.*; Tr. 239:5-240:3.

The General Counsel places significant weight on asserted Union animus harbored by Scott Corliss (“Corliss”) to attempt to prove its case. However, the General Counsel failed to establish that Corliss knew it was Crow who was being left home on May 29, 2013. ALJD 26:1-14; Tr. 907:19-21, 1053-60. Rather, Corliss instructed Britt and Rousseau to leave the driver of Truck 306 home pending the investigation.<sup>9</sup> ALJD 25:3-5, 17-19, 26:13-22; Tr. 907:19-21, 1053-60; *see* Tr.1053:5-16; GC Exh. 11. As Britt explained, it was unlikely Corliss would have known Truck 306 was assigned to Crow.<sup>10</sup> ALJD 26:11-22; Tr. 1053:12-1054:1. The General Counsel cannot rely on union animus alone to establish its case. *See Kennametal, Inc.*, 358 NLRB No. 108, \*13, \*18 (2012) (burden did not shift to respondent under *Wright Line* where General Counsel failed to establish that the employees participated in protected activity).

For all the same reasons as noted above, the fact that Crow was left home for an entire day rather than a partial day pending the investigation into the pea gravel on Truck 306 does not

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<sup>9</sup> The ALJ correctly concluded that the General Counsel did not seek an adverse inference with respect to Corliss’ failure to testify with respect to whether Corliss knew Crow was the driver of Truck 306. ALJD 26, n. 56. No adverse inference has been requested with respect to the lack of documentary evidence of the text messages received by Britt and Rousseau, nor would an adverse inference be warranted. Britt and Rousseau testified that they have received many text messages from Corliss instructing them to investigate matters or look into issues with the trucks. Tr. 899:18-900:6, 1059:5-1060:8. These text messages are not typically saved. Tr. 1057:19-24. The evidence presented at the hearing established that Corliss only referred to the truck number in his text, not Crow’s name. ALJD 20-22, n. 56; Tr. 907:19-21, 1053-60.

<sup>10</sup> The ALJ found Britt’s testimony in this regard to be credible. The Board’s established policy is not to overrule an ALJ’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951).

warrant a different outcome. ALJD 26:24-25; Tr. 827:6-828:3, 1055:3-24, 1370:16-1371:7. Other drivers have been left home without pay to investigate incidents.<sup>11</sup> *Id.* The gravel on Crow's truck was discovered after the workday. Tr. 804:23-805:6. Rousseau needed time the following day to investigate, and he was not able to conduct an investigation first thing the morning of May 29, 2013. Tr. 888:12-19. The General Counsel's arguments should be rejected.

**D. The ALJ correctly concluded that the General Counsel failed to establish antiunion drivers received preferential treatment in hours and work assignments.**

The Administrative Law Judge correctly dismissed the General Counsel's allegation that the named antiunion drivers received preferential assignments from Britt. ALJD, p. 32:21. The General Counsel's Brief fails to remedy the deficiencies noted by the ALJ and advances argument unsupported by the record. The General Counsel also argues that seniority was the sole or primary factor, yet neither the General Counsel nor the Union excepted to the ALJ's finding that dispatching decisions are based on numerous factors. ALJD p. 32:16-19, n. 70. None of the General Counsel's arguments are persuasive.

**1. General Counsel's expansions upon the Union's Exceptions should be rejected.**

The General Counsel did not file any exceptions to the ALJ's decision. Accordingly, the General Counsel's Brief is limited to only those specific exceptions addressed by the Union. *See NLRB Rules and Regulations*, §102.46 (b)(2), (g). For example, the Union did not file specific exceptions to the ALJ's finding that the General Counsel's analysis in Attachment A<sup>12</sup> was

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<sup>11</sup> The General Counsel asserts that Brian Anderson was not suspended due to his failure to clean off the reach of his truck to argue disparate treatment. GC's Brief, p. 15. However, Crow was not suspended for failing to clean off the reach of his truck – he was issued a verbal warning just like Brian Anderson. GC Exhs. 11, 30(e). Rather, Crow was left home pending an investigation into the gravel left on Truck 306, just as other drivers have similarly been left home pending an investigation. *See* Tr. 827:11-828:3, 1055:3-4, 1370:16-1371:7.

<sup>12</sup> In its posthearing brief, the General Counsel refers to its analysis of January through April hours in 2012 and 2013 as an "Attachment." However, in its Brief in Support of the Union's Exceptions, the General Counsel refers to the same information as "Exhibit A." Because Exhibit A and Attachment A appear to be identical, and the Union cited to "Attachment A" from the General Counsel's posthearing brief, CRI will refer to Attachment A and Exhibit A as "Attachment A." Exhibit B to the General Counsel's Brief in Support of the Union's Exceptions will be referred to as 'Exhibit B' because it includes a separate analysis that was not cited by the Union.

flawed. Despite the Union failing to file any exceptions to this finding, the General Counsel presents arguments and an additional exhibit to bolster her flawed analysis. *See* GC’s Brief, pp. 23-25, Exh. B. Similarly, neither the Union nor the General Counsel excepted to the finding that dispatching was based upon numerous factors. These arguments should be dismissed.

**2. The ALJ correctly found that dispatching decisions take into account several factors. Seniority was not the exclusive criterion in dispatching drivers.**

The General Counsel unconvincingly cites to anecdotal testimony from drivers concerning dispatching assignments and flawed “analyses” of hours worked by drivers. *Id.*, pp. 19-25, Attachment A, Exhibit B. This argument should be rejected for several reasons. First, the General Counsel did not plead any Section 8(a)(5) unilateral change allegation in the Second Consolidated Complaint.<sup>13</sup> Second, dispatching decisions were made on the basis of multiple factors, none of which was Union sentiment. Tr. 76:1-19, 77:4-16, 930:19-932:13, 943:5-20, 968:15-969:9, 970:18-973:1, 1005:2-1008:4; CRI’s Posthearing Brief, pp. 23-32, 67-75, 90-91; CRI’s Opposition to the Union’s Exceptions, pp. 21-24. The ALJ agreed and found that “dispatching decisions must consider numerous factors,” and were not based solely on seniority. ALJD, p. 32, n. 70. The Union and the General Counsel failed to except to this finding. Additionally, the General Counsel ignores the fact that both Bobbitt and Jackson testified that factors other than seniority played a role in their dispatching decisions. Tr. 654-656, 665:14-667:2, 668:6-13, 670:2-6, 670:24-671:4.

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<sup>13</sup> Additionally, the General Counsel arguments surrounding the discontinuance of the dispatch sheets being posted in the drivers’ room should be rejected as nothing more than unsupported speculation. GC’s Brief, pp. 21-22. The dispatch sheets merely indicated the beginning of the day – not necessarily the dispatch decisions made after the first assignments were completed. Tr. 740:15-741:4. Moreover, the fact that Britt decided to discontinue posting the dispatch sheets – which were merely notes to help him organize the day – does not infer any discrimination. Tr. 1024:2-1025:24. *See, e.g., Taylor Bros.*, 230 NLRB 861, 866 (1977) (ALJ noted that any minor changes to the employer’s time clock procedures could “logically be expected from a new supervisor...”); *see also E&I Specialists*, 349 NLRB 446, 449-50 (2007) (Board dismissed charges in a refusal to hire case, agreeing with the respondent “that any deviations [in hiring procedures], to the extent they existed, were minor and do not establish animus.”)

Third, despite the ALJ noting that the General Counsel failed to present any documents or other record evidence in support of the preferential dispatching section, the General Counsel still primarily relies on anecdotal driver testimony with a handful of cherry-picked Tripsheets. *See e.g.*, GC’s Brief, p. 19-22. But when looking at some of the examples provided by the General Counsel, it is clear that these arguments are not supported by the record.<sup>14</sup>

As demonstrated by the record evidence and testimony at the hearing, all the drivers shared in the desirable and less desirable work. Tr. 1018:15-1020:13; CRI’s Posthearing Brief, pp. 67-71; CRI Exhs. 45(a)-(yy), 50-57, 64-67. Testimony from CRI’s and the General Counsel’s witnesses demonstrated jobs varied widely and there was no guarantee a certain job would provide more preferable work or more hours. Tr. 76:1-19, 77:4-16, 644:4-10, 654:10-655:2, 655:20-656:20, 665:14-21, 666:1-667:2, 668:6-13, 670:2-6, 670:24-671:4, 714:9-715:5, , 930:19-932:13, 943:5-20, 968:15-969:9, 970:18-973:1, 1005:2-1008:4, 998:2-22, 1001:8-1002:19; CRI’s Posthearing Brief, pp. 67-71, 84-86; CRI Exh. 50-51, 54-55, 64-65.

**3. The ALJ correctly granted little, if any, weight to the information in General Counsel’s Attachment A because the of the Attachment’s “significant problems.”**

The General Counsel claimed that the “clearest evidence” of CRI’s alleged bias in favor of the antiunion drivers is found in comparing the total hours assigned to drivers in January-April 2012 and January-April 2013, as purportedly demonstrated in Attachment A. ALJD, p. 28:8-10. However, the ALJ found there were “significant problems” with the General Counsel’s analysis. ALJD, p. 28:27. The General Counsel’s arguments attempting to remedy these significant problems are not persuasive.

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<sup>14</sup> For example, the General Counsel cites to testimony and some driver Tripsheets showing that antiunion driver Vandyk was assigned to a “potentially Davis-Bacon job” while prounion drivers Tilly and Bobbitt were performing allegedly less-desirable work on that same day. *Id.* However, the evidence demonstrates that Vandyk did not receive Davis-Bacon pay, on any project while during this same month, prounion drivers Tilly and Bobbitt were receiving many more jobs with higher prevailing wage and/or Davis-Bacon pay. CRI Exh. 55.

Initially, it is important to note that the General Counsel's Attachment omits hours worked by a significant portion of the drivers. The Attachment only includes payroll data for those drivers that worked the months of January, February, March and April in **both** 2012 and 2013. *See* Attachment A. The analysis completely dismisses hours worked by those drivers who had hours in either 2012 or 2013, but not both.

The General Counsel claims the ALJ incorrectly reasoned that the General Counsel's analysis failed to consider whether the drivers in the two groups were equally available to work in 2012 and 2013. GC's Brief, p. 24. However, by merely comparing the total hours worked by some drivers in January through April 2012 and January through April 2013, the General Counsel's analysis does not consider whether the drivers were equally available in both years. Just because drivers such as Jeff Cope and Mike Anderson may take more time off during winter months does not necessarily mean they would take off the same amount of time in 2012 compared to 2013. Some drivers voluntarily decide to work less – such as Cope and Anderson. Some drivers do not choose to make themselves available for overtime opportunities on the weekends – another factor that affects their total hours. General Counsel's summaries do not take these considerations into account.<sup>15</sup>

The General Counsel also takes issue with the ALJ's reasoning "that the General Counsel failed to provide detailed information with regard the [sic] three statistical outliers." GC's Brief, pp. 24-25. The General Counsel asserts that the three outliers' "percentages are well outside of the two standard deviations from the mean." GC's Brief, p. 24. Neither the General Counsel,

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<sup>15</sup> In contrast, CRI's summaries include all dump truck driver hours for total hours, weekend work, weekday overtime hours, and prevailing wage and Davis-Bacon work for a six-month period in 2012 and 2013. CRI Exhs. 50-57, 64-67. The weekend hours and overtime weekday hours can help illuminate whether some drivers were more available to volunteer for weekend work and weekday overtime work. These summaries helped demonstrate to the ALJ that antiunion drivers Cummings and Thrasher received more hours because they volunteered for weekend work more often. ALJD, 30:23-27. Similarly, prounion driver Brian Tilly often received more weekday overtime hours than antiunion drivers due to being more available to work overtime on the weekdays. ALJD 29:21-26; GC Exhs. 70-70(a), 71(a)-71(aa); CRI Exhs. 45, 52, 53.

nor the Union, presented expert testimony concerning statistical analysis, whether the General Counsel's analysis was "statistically significant," or why the General Counsel's analysis should be persuasive from a statistics standpoint. ALJD, p. 28, n. 60.

Second, in an attempt to remedy the deficiencies of Attachment A, the General Counsel includes the outliers omitted in Attachment A in a separate Exhibit B. However, Exhibit B includes the same skewed analysis and inaccurate data as Attachment A. Like Attachment A, Exhibit B only includes drivers who worked in both 2012 and 2013 in January, February, March and April. By only including some drivers, General Counsel's analysis is inaccurate and leads to unsupportable conclusions (*e.g.*, there was less work in March 2013 compared to March 2012).

The General Counsel explains that it included some of the outlier data to present a more complete picture of the hours worked. GC's Brief, p. 25. However, by including Bryce Vordahl's hours, the General Counsel reveals how flawed and inaccurate the Attachment and Exhibit are. First, the General Counsel erroneously used another driver's hours for Vordahl in April 2013. Vordahl did not work 96.2% fewer hours in April 2013 compared to April 2012. He only worked 5.27% fewer hours in April 2013 compared to April 2012. *Cf.* CRI Exh. 64 with 65; *see also* CRI Exh. 45(ww), Vordahl's payroll records from April 2012 and April 2013. The General Counsel still has omitted driver Michael Griffin's 145 hours from the April calculation. *Cf.* CRI Exh. 64 with 65; Attachment A; CRI Exh. 45(w), When both Griffin and Vordahl are included using the criteria used to create this skewed Exhibit, the "other" drivers (*i.e.*, not the five antiunion drivers), who worked in April 2012 and April 2013 received an increase of 34.7% in average hours, compared to only a 20.7% increase in average hours for the antiunion drivers. *See id.* Moreover, the other omitted driver that was not acknowledged by the General Counsel as being excluded is Brett Delorm's February hours. *See* Attachment A. Delorm worked 278.9% more hours in February 2012 compared to February 2013. Attachment A. When Delorm is

included, the “other” drivers (*i.e.*, not the five antiunion drivers), who worked in February 2012 and February 2013 received an increase of 75% in average hours, compared to only a 62.2% increase in average hours for the antiunion drivers.

Both Attachment A and Exhibit B represent inaccurate attempts to skew the more complete total hours summary provided by CRI. CRI Exhs. 50-57, 64-67. When examining the total hours worked by the five antiunion drivers in 2012 and 2013, it is clear they did not receive a greater share of the total hours worked in 2013 compared to 2012. CRI Exhs. 50, p.2; 51, p.2; 64, p.2; 65, p.2. However, even when the General Counsel uses the skewed criteria and includes all the alleged outliers or previously omitted drivers, the five antiunion drivers received less of an increase in hours compared to the other drivers who worked in February 2012, February 2013, April 2012, and April 2013. The ALJ was correct to conclude that the evidence simply does not support the General Counsel’s argument that antiunion drivers were treated more favorably than other drivers.<sup>16</sup> ALJD, p. 32, n. 70.

### III. CONCLUSION

For all of the above-stated reasons, the Union’s Exceptions must be rejected.

Dated this 19th day of May, 2014.



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<sup>16</sup> The General Counsel’s argument that whether pro-union drivers received as many hours as anti-union drivers is not germane to the allegation should also be rejected as a distinction without a difference. Certainly, pro-union drivers’ work and hours is relevant to whether antiunion drivers received *more favorable* work or hours.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2014, I caused to be filed with the Executive Secretary of the National Labor Relations Board via the NLRB E-Filing system the above and foregoing “*Corliss Resources, Inc.’s Opposition to General Counsel’s Brief in Support of the Union’s Limited Exceptions to ALJ’s Decision.*” I further certify that on May 19, 2014, true and correct copies of the same were served via electronic mail upon the following individuals at the email address specified for them as shown below; and paper copies of the same were mailed to the undersigned via U.S. Mail, First Class Postage prepaid, at the following physical addresses:

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Dated this 19th day of May, 2014.

  
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