UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

Universal Fuel, Inc.	:	
	:	
and	:	**Case 5-CA-34622**
	:	
International Association Of	:	
Machinists & Aerospace Workers	:	
AFL-CIO, District Lodge 4	:	

REPLY BRIEF ON BEHALF OF RESPONDENT

Submitted by
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Date: January 4, 2010

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Respondent Universal Fuel, Inc. submits the following reply to the Answering Brief submitted by Counsel for the General Counsel:

I. WAIVERS

The Answering Brief contends (pp 1-3) that Respondent has waived any right to challenge certain findings and conclusions by failing to take exception to them. Nine bullet point items are identified as having been waived. With regard to bullet point items 1, 2, 4, 6 and 9, Respondent agrees that it did not except to these findings or conclusions. Respondent does not necessarily agree with the substance of these findings or conclusions, but saw no necessity to take exception from them.

With regard to bullet point items 3 (Exception 2), 5 (Exception 2), 7 (Exception 3), and 8 (Exceptions 6, 7, and 8), however, Respondent

disagrees and submits that these findings or conclusions were challenged by its Exceptions as noted.

Further, the Answering Brief does not address or challenge Respondent's Exceptions 5, 8, 11, or 13. Consequently, Respondent believes that those Exceptions must be well taken.

II. SPECIFIC ITEMS/ARGUMENTS

Respondent offers the following reply to ten arguments or contentions made in the Answering Brief:

1. The CBA Does Not Become The AWD (pp 3-4)

The Answering Brief's description of the bargaining process under the Service Contract Act is misleading when it asserts that an agreed upon collective bargaining agreement (CBA) automatically becomes the Area Wage Determination (AWD). The actual testimony was that the CBA is submitted to the government's contracting officer, who determines whether the CBA's terms are reasonable, and if so incorporates them into the AWD (TR. 84). The process is not automatic.

2. Was Management Rights An Open Issue? (p 7)

The Answering Brief contends that there was never any real disagreement during the negotiations over the subject of management rights, a position taken apparently to fault Respondent for proposing an expanded management rights clause on November 6 after the Union had

unequivocally rejected Respondent's admittedly lawful (see Answering Brief p. 25) proposal of October 8 (Proposal A). This position ignores the undisputed testimony that the Union repeatedly tied the subjects of managements rights and union security during the negotiations, with the Union making the explicit offer: if you give us what we want on union security, we give you what you want on managements rights (GCX4 for July 24 session). Since there was never anything close to an agreement on union security, there could not have been any agreement on managements rights. By trying to create the misimpression that managements rights was never an issue, the Answering Brief fails to acknowledge or address the obvious: If the Union tied the two subjects together (union security and managements rights) prior to November 6, it was both logical and reasonable for Respondent to link the two subjects on November 6 and ask for more in the way of managements rights in exchange for giving more on union security.

3. The Reason The November 6 Meeting Was In Alabama (p. 8)

The Answering Brief omits key relevant facts when discussing why Respondent would not conduct the November 6 meeting in Maryland. At the close of the meeting on October 8, Respondent informed the Union that it would not be returning to Maryland (Tr. 150). Respondent saw no reason to do so because it had just communicated a last and final offer. The Union

promptly (before any discussion of a subsequent meeting had taken place) told the bargaining unit employees that the Company had left Maryland, and would not be returning (RX6 – Union communication to unit employees – the Company and its lawyer have left Maryland). Thereafter, the Union began asking for another meeting (RX6; Tr. 150-1), and specifically asked the FMCS to set up another meeting. Respondent's "insistence" that the meeting be in Alabama was totally consistent with its stance on October 8 when it communicated to the Union what the Answering Brief admits was an "unobjectional proposal" (Brief p. 25; Tr. 150). Part and parcel of that "unobjectional proposal" was that Respondent saw no reason for further negotiations in Maryland – especially since Respondent fully expected the employees to ratify Proposal A in light of the Union's representation on October 8 that a ratification vote on Proposal A would be taken (Tr. 80). It was more than a week later, via email, that the Union took the position that it would never allow the employees to vote on any proposal that did not contain its proposal on union security (RX5).

4. The Union Never Justified Its Union Security Proposal On The Basis Of Ensuring Consistently Among Its Agreements With Other Employers (pp 9, 28).

At both pages 9 and 28, the Answering Brief asserts that the Union justified its inflexible stance on union security based on a desire "to ensure consistency among its agreements with other employers at NAS Pax

River." The cited transcript pages 177, 178, and 231 do not support this assertion. Page 231 does not even address this issue but contains only Union bargaining representative Tony Provost's statement that for the Union to accept anything else other than its only proposal on union security was the equivalent of asking him to give up his first born child.

The testimony of the Union's other bargaining representative at pp. 177-180 is instructive. Mr. Compher testified that the Union conducted meetings with employees and that the employees instructed the Union to insist on this particular union security clause. Then, on p. 177 ll 8-14, Counsel attempted to lead the witness into saying that the Union wanted to maintain consistency with other employees. But the witness would not do so. Instead, the witness testified that he showed the employees several collective bargaining agreements with other companies at PAX and that every other agreement had the same union security clause (a demonstrably false statement – see RX18 for a more "employee friendly" union security clause in effect at another IAM represented company at PAX). Then, Mr. Compher said – "so that's why <u>they</u> (the employees) wanted to propose that, to be consistent with all other contracts right there at Pax River." Maintaining consistency could not have been a reason for the Union's position, because it is undisputed (see RX18) that the Union has less stringent and more employee friendly union security clauses in

place with other employers at PAX. If the Union really wanted to be "consistent" with its agreements with other PAX employers, why was the language in RX18 never offered to Respondent?

5. Respondent's Other Reason For Objecting to Union Security (pp 9, 28)

The Answering Brief ignores the fact that Respondent had a second reason for objecting to the Union's one and only proposal on union security – the Union's intransigence and refusal to make or even consider any changes to its proposal – despite Respondent's express invitation for the Union to do so. (Tr. 94, 204 – the chief spokesmen for both parties confirmed that the Company invited compromise but that the Union refused). Even the ALJ found that the Union was "not without fault" in this regard.

6. Retreating And Reneging (pp 11-12)

The Answering Brief makes much over the <u>initial</u> changes in Proposal B regarding managements rights and the subjects of seniority and discipline. The Brief ignores, however, the undisputed fact that the revised version of Proposal B submitted at the table just two hours later only gave management the right to make job assignments based on considerations other than seniority, and provided that discipline would be based on just cause. The Answering Brief also ignores the fact that these adjustments in

Respondent's bargaining position were obviously based on changed circumstances – namely, the Union's unexpected refusal to allow employees to vote on Proposal A. Further, the changes were legitimately linked to changes in Respondent's union security proposal – because the Union had consistently linked managements rights with union security.

7. The Subcontracting Herring (p 12-13)

The subcontracting language in Proposal B was the subject of 30 seconds of discussion on November 6 (TR. 47). Unlike other parts of Proposal B as to which the Union had objections (seniority, just cause, no strikes, union security), the Union voiced no objection to this proposal on November 6 but merely asked a question about it (Tr. 47). Consequently, unlike those parts of Proposal B to which the Union objected, Respondent never changed the proposed language on subcontracting.

8. The No Picketing Herring (pp 15-16)

As noted in the ALJ's Decision, it is uncertain at best as to whether Respondent's initial no strike language in Proposal B is objectionable, but all agree that the final version of the No Strike Clause contained in Proposal B is legitimate in every respect. In fact, the final version is a slight modification of a Union proposal (Tr. 58).

9. Respondent's "Concessions" On November 9 (p 18)

The Answering Brief grudgingly acknowledges that Respondent addressed and responded to the objections raised by the Union on November 6 regarding seniority and just cause, but the Brief fails to acknowledge that Respondent also addressed the Union's concerns and modified its stance on the no strike language (Tr. 58).

10. Withdrawal Of <u>All</u> Contract Offers v. Economic Proposals (pp 19, 33, 34, 35, 38)

This gets to the heart of this case. Respondent's only witness testified that at the end of the day on November 6 both Proposals A and B were withdrawn if the Union did not accept them by December 1. The two Union negotiators denied that either Proposal was withdrawn. The ALJ credited the Union witnesses on this point. At footnote 13 (p. 19), the Answering Brief seeks to harmonize the obvious discrepancy between this credibility finding and the ALJ's Decision, which finds that Proposals A and B were unlawfully withdrawn. Footnote 13 says that somehow the Proposals were withdrawn without anyone from Respondent ever having actually said that they were withdrawn. How could that be? The Answering Brief does not say.

The Answering Brief faults Respondent for withdrawing both economic and noneconomic proposals. First, Respondent submits that its explanation of the reason for withdrawing the proposals (economics) made it clear that it was only the economic portion of the proposals being withdrawn (Tr. 55-6). More to the point, once the Union filed the instant unfair labor practice charge, Respondent reinstated Proposal A (non objectionable) with new effective dates for the economic terms (RX14). Proposal A (Respondent's preferred approach) was reinstated February 18, 2009 with an invitation to the Union to resume negotiations, an invitation that remains unaccepted. Thus, Respondent has already voluntarily reinstated all non economic (and most economic) terms of Proposal A, but apparently the Union is not interested in negotiating further.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2010, I electronically filed the Reply Brief on Behalf of Respondent with the Executive Secretary of the Board, and served a true and correct copy of the forgoing via e-mail to the following:

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