

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

KENNAMETAL, INC.,)	
)	
Respondent,)	
)	
And)	1-CA-46293
)	1-CA-46294
)	
)	
UNITED STEELWORKERS, LOCAL 5518,)	
Affiliated with UNITED STEELWORKERS)	
OF AMERICA, AFL-CIO, CLC)	
)	
Charging Party.)	

**RESPONDENT’S EXCEPTIONS
TO DECISION OF ADMINISTRATIVE LAW JUDGE**

NOW COMES Kennametal, Inc., Respondent herein (“Kennametal” or “the Company”), and files its exceptions to the decision of Administrative Law Judge Arthur Amchan (“ALJ”), issued April 12, 2011, as follows:

1. Respondent takes exception to the ALJ’s findings and/or conclusions that “MBS cut the Union out of the process of accident investigation, contrary to the provisions of the collective bargaining agreement,” that “Respondent diminished the possibility that factors such as production quotas would be considered in assessing the cause of an accident, that “MBS in making it more probable that an injured employee would be found at fault for an industrial accident had a clear relationship to disciplinary measures taken as the result of an accident,” and that “I reject Respondent’s argument that MBS has nothing to do with Respondent’s discharge and discipline policies,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 3: 10-18).

2. Respondent takes exception to the ALJ's findings and/or conclusions rejecting Respondent's contention that "consideration of its disciplinary policy regarding safety violations is barred by Section 10(b) of the Act" and finding that Respondent "did not provide the Union clear and unequivocal notice of this policy until January 2011," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 3: n. 3).

3. Respondent takes exception to the ALJ's findings and/or conclusions that "there is no credible evidence that Respondent implemented the disciplinary policy reflected in its *Work Instructions for Corrective Action* until July 2010 at the earliest when Eric Huttenlocker assumed day-to-day responsibility for labor relations at the Lyndonville facility" and the ALJ's discrediting of Amy Morissette, on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 3: n. 3).

4. Respondent takes exception to the ALJ's findings and conclusions that that "Respondent did not post those portions of the Work Instructions pertaining to suspension and termination for safety violations and that the Union did not receive any notice of this change in disciplinary policy until January 2011," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 4: 28-35).

5. Respondent takes exception to the ALJ's findings and conclusions that "Respondent claims to have applied this policy in September 2009 to employee Robert Gordon when he cut his finger," on the grounds that Respondent made no such claim at all. (JD 4: n. 4).

6. Respondent takes exception to the ALJ's findings and conclusions that "Morissette's testimony is also inconsistent with the Respondent's issuance of a written warning 2 to Chad Tibbets on February 12, 2010," that "Tibbets' failure to follow proper lockout/tagout procedures is a serious violation pursuant to the Procedure for Corrective Action and should have

resulted in a three day suspension pursuant to the work instructions,” and that “[t]he failure to suspend Tibbets strongly suggests that Respondent was not applying the new safety discipline policy until September 2010 when it suspended Noyes,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 4: n. 4).

7. Respondent takes exception to the ALJ’s findings and conclusions that “*the Procedure for Corrective Action* was the only document ever posted on the bulletin board,” and his discrediting of Amy Morissette,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 5: 5-15).

8. Respondent takes exception to the ALJ’s findings and conclusions that “Respondent’s contention that it provided adequate notice of the change in disciplinary policy to the Union is inconsistent with the essence of Article 20 of the collective bargaining agreement,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 5: 16-25).

9. Respondent takes exception to the ALJ’s findings and conclusions that “Morissette’s testified at Tr. 414 that so far as Respondent was concerned, the new enhanced disciplinary policy was already in effect when she went to look at the bulletin board in September 2009,” which would mean that “the corrective action policy was a ‘fait accompli,’” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 5: 26-31).

10. Respondent takes exception to the ALJ’s findings and conclusions that shop rules “do not include a policy which does not govern employee conduct, but which rather imposes new draconian consequences for employee conduct,” that “Article 19 appears to contemplate posting of “shop rules” on a number of different bulletin boards,” and that “Respondent cannot rely on

Article 19 even if it did post the material portions of the procedure and work instructions,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law.

(JD 5: n. 6).

11. Respondent takes exception to the ALJ’s findings and conclusions that “the work instructions were not posted and in force at Lyndonville until sometime after July 2010, that Rick Brighenti should be discredited, and that “None of the disciplinary actions taken prior to the termination of Ken Wilkins appear to follow the discipline policy set forth in the work instructions,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD; 5-6: n. 6).

12. Respondent takes exception to the ALJ’s findings and conclusions that the 2009 Safety Corrective Action Policy was a significant change in terms of employment and was a mandatory subject of bargaining, on the grounds that they are not supported by substantial evidence and are inconsistent with the law.(JD 6: 43; 7: 1-6).

13. Respondent takes exception to the ALJ’s findings and/or conclusions that “Respondent’s unilateral abandonment of the past practice of progressive discipline for safety violations violated Section 8(a)(5) and (1),” on the grounds that they are not supported by substantial evidence and are inconsistent with the law.(JD 7: 16-19).

14. Respondent takes exception to the ALJ’s findings and/or conclusions that “Respondent’s Procedure for Corrective Action, as implemented at Lyndonville, converted virtually any significant safety violation or injury into just cause for discipline or discharge” and “materially modified the parties’ contract and was done so without providing the Union with notice of this change and an opportunity to bargain about it,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD: 7: 22-26).

15. Respondent takes exception to the ALJ's findings and/or conclusions that "Upon implementation of MBS, the Union and its Safety Committee played no role in investigating accidents at the plant," that "This was done unilaterally by Respondent," and that "By unilaterally cutting the Union out of the investigation of accidents in situations in which the investigation could lead to serious disciplinary consequences to the injured employee, Respondent violated Section 8(a)(5) and (1)," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 8: 40-45; 9: 1-7).

16. Respondent takes exception to the ALJ's finding and/or conclusion that "Respondent's escalation of discipline [regarding Doug Noyes] was part and parcel of the MBS and thus its enhanced disciplinary policy was implemented in violation of Section 8(a)(5) and (1)," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 9: 24-26).

17. Respondent takes exception to the ALJ's findings and conclusions that the one-day suspension of Doug Noyes was inconsistent with the 2009 Safety Corrective Action Policy" and that "in February 2010, although while Respondent had escalated in its disciplinary policy shortly after the implementation of MBS, it had not implemented the Correction Action/Work Instructions as policy at Lyndonville," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 9: 15-40, n. 11, 12, 13).

18. Respondent takes exception to the ALJ's findings and conclusions that the written warning to Chad Tibbets "was associated with the increased pressure placed on management by the implementation of MBS and the involvement of Eric Huttenlocker in the management of labor relations at the Lyndonville facility beginning in December 2009," that the written warning

to supervisor Sean Jewell “appears inconsistent with the work instructions for corrective actions,” and that this “is additional evidence that the disciplinary policy utilized to suspend Noyes and terminate Kenneth Wilkins had not been fully implemented as of April 2010,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 10: 1-21).

19. Respondent takes exception to the ALJ’s findings and/or conclusions that “this ratcheting up on the discipline scheme was also related to MBS since it followed closely the installation of the white boards and Respondent’s August 24, 2010 memo insisting the employees initial the white boards,” and that “Huttenlocker implemented the new disciplinary policy without providing notice to the Union between July and early September,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 10: 23-30).

20. Respondent takes exception to the ALJ’s findings and/or conclusions that “On July 16, 2010, USWA Staff Representative Carl Turner requested Respondent provide him any information on what he understood was a new safety procedure at the plant and to bargain with the Union over its implementation” and that “This referred to Respondent’s posting of the white boards and the requirement that employees initial these boards,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 11: 47-50; 12: 1-7).

21. Respondent takes exception to the ALJ’s findings and/or conclusions that “At least that part of the MBS requiring employees to initial the white boards is a mandatory subject of bargaining in that employees are subject to discipline if they refuse to do so” and that “Respondent violated Section 8(a)(5) with regard to the MBS at least with respect to this

requirement of the program,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 12: 21-25).

22. Respondent takes exception to the ALJ’s findings and/or conclusions that “Respondent violated Section 8(a)(5) and (1) with regard to the disciplinary policy reflected in the work instructions for corrective action regardless of whether it is deemed to be part of MBS or a totally separate policy,” that “in the context of this case to consider the disciplinary policy for safety violations as a totally separate and distinct matter from MBS would elevate form over substance,” and that “MBS and the discipline policy are part of the same corporate initiative to improve Respondent’s safety record, particularly at Lyndonville,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 12: 26-32).

23. Respondent takes exception to the ALJ’s findings and/or conclusions that “the implementation or stricter enforcement of this safety policy is related to other initiatives that clearly were part of MBS, the erection of the white boards and the imposition of the requirement that employees certify the safety of their work environment,” and that “the change in the safety policy, made without providing the Union an opportunity to bargain, is a violation of Section 8(a)(5), whether or not it is technically part of MBS,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 12: 34-45).

24. Respondent takes exception to the ALJ’s findings and/or conclusions that “Respondent’s failure to discipline any employee with more than a warning, other than a one day suspension for Jenotte, until August 2010, demonstrates that the policy had not yet been implemented,” on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 12: n. 17).

25. Respondent takes exception to the ALJ's findings and/or conclusions that "Respondent did not provide adequate notice of the policy itself until January 2011 and that for this reason, its Section 10(b) contention is without merit," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 13: 1-6).

26. Respondent takes exception to the ALJ's findings and/or conclusions that the Union did not waive any right to bargain over MBS, on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 13: 7-24).

27. Respondent takes "exception to the ALJ's findings and/or conclusions that Respondent failed to respond to Carl Turner's request relating to the requirements for initiating the white boards" and "Respondent has violated Section 8(a)(5) and (1) in failing to provide this information," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 14: 25-32).

28. Respondent takes exception to the ALJ's findings and/or conclusions that Respondent violated sections 8(a)(5) and (1) by "failing and refusing to bargain with the Union over the implementation of the Management Based Safety Program insofar as it required employees to take such actions as initialing agreement or disagreement with the safety check list on its white boards upon pain of discipline," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 15: 30-33).

29. Respondent takes exception to the ALJ's findings and/or conclusions that Respondent violated sections 8(a)(5) and (1) by "Excluding the Union from accident investigations," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 15: 34)

30. Respondent takes exception to the ALJ's findings and/or conclusions that Respondent violated sections 8(a)(5) and (1) by "unilaterally implementing and/or more strictly enforcing its disciplinary policies for safety violations," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 15: 35-36).

31. Respondent takes exception to the ALJ's findings and/or conclusions that "Respondent violated sections 8(a)(5) and (1) by "suspending Doug Noyes and terminating Kenneth Wilkins," on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 15: 37).

32. Respondent takes exception to the ALJ's findings and/or conclusions that Respondent violated sections 8(a)(5) and (1) by failing to respond to Carl Turner's July 16, 2010 request for information regarding MBS, on the grounds that they are not supported by substantial evidence and are inconsistent with the law. (JD 15: 38-40).

33. Respondent takes exception to the ALJ's proposed remedy, on the grounds that it is not supported by substantial evidence and is inconsistent with the law. (JD 15: 41-52; 16: 1-10).

34. Respondent takes exception to the ALJ's proposed Order, on the grounds that it is not supported by substantial evidence and is inconsistent with the law. (JD 16-17).

35. Respondent takes exception to paragraph 2 (d) of the ALJ's order insofar as it orders Respondent to "At the request of the Union, rescind any unilateral changes that affect the wages, hours and/or terms and conditions employment of unit employees," on the grounds that it is overly broad and purports to leave open the possibility that there are other changes not found by the ALJ that would have to be rescinded. (JD 17: 1-9).

36. Respondent takes exception to the ALJ's proposed Notice to Employees, on the grounds that it is not supported by substantial evidence and is inconsistent with the law.. (JD 18-19).

37. Respondent takes exception to that part of the proposed Notice that states: "WE WILL at the request of Local Union No. 5518, rescind any other part of the Management Based Safety Program that affects the wages, hours and working conditions of bargaining unit Employees" on the grounds that it is overly broad and purports to leave open the possibility that there are other changes not found by the ALJ that would have to be rescinded. (JD 19).

38. Respondent takes exception to the ALJ's failure to find that the MBS program was lawfully implemented in its entirety, or at least except as specifically found otherwise, on the grounds that the record requires such a finding.

WHEREFORE Respondent requests that the ALJ's decision be reversed for the reasons set out herein and in Respondent's Brief in Support of Exceptions.

Respectfully submitted this 10th day of May, 2011.

/s/ Charles P. Roberts III

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I served the forgoing RESPONDENT’S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE’S DECISION by electronic mail on the following parties:

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This the 10th day of May, 2011.

s/Charles P. Roberts III
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