

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SIX**

USIC LOCATING SERVICES, INC.,

Respondent,

and

Case 6-CA-37328

**COMMUNICATION WORKERS OF AMERICA,
LOCAL 13000, AFL-CIO, CLC,**

Charging Party.

**CONDITIONAL CROSS-EXCEPTIONS TO
DECISION OF ADMINISTRATIVE LAW JUDGE**

Cynthia K. Springer
Faegre Baker Daniels LLP
300 N. Meridian Street
Suite 2700
Indianapolis, IN 46204
Phone: (317) 237-0300
Fax: (317) 237-1000

Attorneys for Employer

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On January 10, 2012, Administrative Law Judge David I. Goldman issued a Decision in the above-captioned matter. (“Decision”).¹ The Decision recommended dismissal of the above-captioned matter. Pursuant to Section 102.46 of the Rules of the National Labor Relations Board (“Board”), Respondent USIC Locating Services, Inc. files the following cross-exceptions to findings in the Administrative Law Judge’s (“ALJs”) Decision in the following particulars to be considered should the Board reverse the ALJ’s Decision:

1. To the ALJ’s statement that “Article IV of the 2006 Agreement includes a form of a union security clause and addresses payroll dues deduction.” (ALJD p. 3)
2. To the ALJ’s statement that “Although the obligation to check off dues during the term of the contract is less than clear in the 2006 Agreement, it appears to have been the consistent practice of the Respondent . . .” (ALJD p. 3)
3. To the ALJ’s statement that “Spring wrote, in relevant part . . .” (ALJD p. 4)
4. To the ALJ’s statement concerning the Board’s basis for finding no violation where an employer unilaterally ceases dues checkoff at the termination of the contract that

¹ The Administrative Law Judge’s Decision is referenced as “ALJD.” The Stipulated Record is referenced as “S.R.” Exhibits attached to the Stipulated Record are referenced as “Ex.”

provided for it, that “there is little in the way of reasoning by a Board majority that justifies this departure from the Board’s Katz doctrine.” (ALJD p. 6)

5. To the ALJ’s statement that a Board majority in *Bethlehem Steel*, “ties, and in some manner equates, dues checkoff with union security provisions.” (ALJD p. 6)
6. To the ALJ’s statement that “in this case dues checkoff is referenced only indirectly in the union security clause.” (ALJD p. 7)
7. To the ALJ’s statement that “arguably, here there is no specific contractual language limiting checkoff to the period when the contract is in effect. (ALJD p. 7)
8. To the ALJ’s statement that, “The General Counsel’s arguments in support of this proposition are substantial.” (ALJD p. 7)
9. To the ALJ’s statement that, “The collapse of the two very different concepts of union security and dues checkoff into one, as articulated by the Board in *Bethlehem Steel*, is not compelling.” (ALJD p. 8)
10. To the ALJ’s admitted failure to “reach the Respondent’s contention that the case should be dismissed on statute of limitations grounds.” (ALJD p. 8, fn 6)
11. To the ALJ’s admitted failure to “reach any of [Respondent’s] other specific arguments, even those [he] commented on in passing.” (ALJD p. 8, fn 6)
12. To the ALJ’s failure to find that the General Counsel’s statement that, “The government contends USIC’s unilateral refusal to continue checking off dues after the contract’s expiration constituted a unilateral change in a mandatory subject of bargaining, and thus, was unlawful when, as admitted here, undertaken during bargaining for a new contract without first bargaining to a valid impasse,” is unsupported by the record evidence. (ALJD p. 4)
13. To the ALJ’s failure to find that Respondent was not required to deduct union dues pursuant to the language in the 2006 Agreement.
14. To the ALJ’s failure to find that the parties had reached impasse when the Respondent partially implemented its Last, Best and Final Offer on March 1, 2010, concerning which the Local Union did not file an unfair labor practice charge. (S.R. ¶17)
15. To the ALJ’s failure to find that on June 17, 2010, the parties bargained to agreement concerning dues checkoff but on June 19, 2010, the bargaining unit failed to ratify the agreement and the Local Union has not made any further request to bargain. (S.R. ¶17)

Contemporaneous with the filing of these Exceptions, the Employer files a Brief

Supporting The Administrative Law Judge’s Decision To Dismiss The Complaint And

Respondent’s Cross-Exceptions To Decision Of Administrative Law Judge And Opposing

Counsel For The Acting General Counsel's And Charging Party's Exceptions To Decision Of Administrative Law Judge. For the reasons set out herein and in its Brief, the Employer requests the ALJ's dismissal decision be sustained and, should the ALJ's dismissal be reversed, the ALJ's statements be reversed in each particular as specified above and that all findings be entered in accordance with the Respondent's Cross-Exceptions.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP²

By: Cynthia K. Springer
Cynthia K. Springer
300 North Meridian Street
Suite 2700
Indianapolis, Indiana 46204
(317) 237-0300

Attorneys for Employer

² Effective January 1, 2012, Baker & Daniels LLP became Faegre Baker Daniels LLP.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2012, a true and correct copy of the foregoing document was served via email to the following parties of record:

Julie Stern
Counsel for the Acting General Counsel
Region Six, National Labor Relations Board
1000 Liberty Street, Room 904
Pittsburgh, PA 15222
Email: Julie.Stern@nlrb.gov

Jonathan Walters
Counsel for the Charging Party
Markowitz & Richman
121 S. Broad Street, 11th Floor
Philadelphia, PA 19107
Email: jwalters@markowitzandrichman.com


