

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE**

**FLEX FRAC LOGISTICS LL.C AND
SILVER EAGLE LOGISTICS LL.C,
JOINT EMPLOYERS**

Respondents

and

CASE 16-CA-027978

KATHY LOPEZ

an Individual

**ACTING GENERAL COUNSEL'S MOTION TO STRIKE
RESPONDENT'S ANSWERING BRIEF**

Administrative Law Judge Margaret Brakebusch (Judge) having issued her Supplemental Decision on Remand, and Counsel for the Acting General Counsel (AGC) having filed its Exceptions to that decision and a Brief in Support thereof, on March 28, 2013, Flex Frac Logistics, LLC and Silver Eagle Logistics, LLC, Joint Employers (Respondent), filed its Answering Brief to AGC's Exceptions. Due to its failure to comply with the requirements set forth in Section 102.46(d)(2) of the Board's Rules and Regulations, Counsel for the Acting General Counsel now requests that the Board strike Respondent's Answering Brief in its entirety or alternatively that the Board strike certain portions of Respondent's Brief.

Section 102.46(d)(2) provides the answering brief's required form. That section states:

The answering brief to the exceptions shall be limited to the questions raised in the exceptions and in the brief in support thereof. It shall present clearly the points of fact and law relied on in support of the position taken on each question. Where exception has been taken to a factual finding of the administrative law judge and it is proposed to support that finding, the answering brief should specify those pages of the record which, in the view of the party filing the brief, support the administrative law judge's findings.

Contrary to the specifications of Section 102.46(d)(2), Respondents Answering Brief makes no clear presentation of facts and cites to no law in support of its position. In its response to the AGC's Exceptions 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22 and 23, which constitute the majority of its responses, Respondent merely offers "the record", "the record in general", "a full review of the record", "the complete record", "the overall record" or "the entire record" or reiterations of the judge's decision such as her credibility determinations to support the judge's findings and conclusions. In the few responses (responses to Exceptions 1, 2 and 11) which do employ citations to the record, it is generally unclear how the citation provided contradicts the AGC's exception. In the one response where Respondent made a legal argument (exception 18), it merely stated, without support of case law, that the judge's application of burdens was proper.

Because Respondent has failed to "present clearly" its opposition to the exceptions and has thus failed to comply with the requirements of Section 102.46(d)(2), Counsel for the Acting General Counsel requests that the Board strike Respondent's Answering Brief. Alternatively, Counsel for the Acting General Counsel requests that the Board strike those portions of the brief which do not comport with the Board's rules.

Dated at Fort Worth, Texas, this 10th day of April 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Counsel for the Acting General Counsel's Motion to Strike Respondent's Answering Brief has been served this 10th day of April 2013, upon each of the following:

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