

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

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**PRESSROOM CLEANERS, INC.,**

**Respondent,**

**and**

**Case No. 34-CA-071823**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 32BJ,**

**Charging Party.**

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**CHARGING PARTY SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL  
32BJ'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS**

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## **I. INTRODUCTION**

Administrative Law Judge Steven Fish issued a carefully reasoned decision finding that Respondent Pressroom Cleaners, Inc. (“Pressroom”) violated the National Labor Relations Act in numerous ways when it was awarded the account to clean the offices of the Hartford Courant in December 2011. Pressroom does not contest the finding that its site supervisor threatened workers that they would be fired if they engaged in union activities or even spoke to a representative of Charging Party Service Employees International Union, Local 32BJ (“Local 32BJ” or “the Union”). The ALJ also found that Pressroom refused to hire six employees of the predecessor cleaning contractor, Capitol Carpet & Specialty Cleaning, Inc. (“Capitol”) because they were members and supporters of Local 32BJ. The ALJ further found that if not for the unlawful refusal-to-hire, Pressroom would have been a successor to Capitol under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), and thus, Pressroom had an obligation to bargain with Local 32BJ.

For the most part, Pressroom has not taken exception to the ALJ’s factual findings. Nevertheless, without acknowledging those factual findings, and without addressing the numerous cases relied upon by the ALJ, Pressroom challenges several of the conclusions drawn by the ALJ. Pressroom’s exceptions are so meritless that they border on frivolous. As explained in greater detail below, the Board should summarily reject Pressroom’s exceptions.

## **II. STATEMENT OF FACTS**

### **A. Pressroom is Awarded the Contract to Clean the Courant’s Offices.**

For many years, Capitol Carpet & Specialty Cleaning, Inc. (“Capitol”) cleaned the offices of the Hartford Courant at 285 Broad Street in Hartford, CT, and Local 32BJ was the exclusive bargaining representative of the Capitol employees at the site. Administrative Law Judge’s

Decision (“ALJD”) at 3:11-12; 3:21-22. In April 2011, the Tribune Company issued a request for proposals for janitorial services at a number of its newspapers across the country, including the Courant. *Id.* at 3:41-44. Pressroom was notified in October 2011 that it was awarded the contract to clean the Broad Street facility, *id.* at 13:12:14, and it took over the account from Capitol on December 12, 2011. *Id.* at 2:40-3:1.

**B. The Capitol Employees Apply for Employment With Pressroom.**

In September 2011, Local 32BJ began hearing rumors that Capitol was going to lose the contract. ALJD at 4:12-15. Local 32BJ representative Wojciech Pirog left voice mail messages for Bernard Gullotta, the Courant’s facilities and engineering manager, but he received no reply. *Id.* at 4:21-22. On September 12, 2011, Pirog sent Gullotta a letter signed by all eight of the Capitol employees at the Courant -- Epifania DeJesus, Emilio Figueroa, Ramon Garcia, Razmik Hovhannisayn, Daniel Korzeniecki, Mariana Lubowicka, Eddy Williams, and Anahit Zhamkochyan making an unconditional application for employment with the new contractor. *Id.* at 4:32-43. Gullotta did not respond to the letter. *Id.* at 4:45-46. The Union also leafleted in front of the Courant building, and held at least one rally at the site in an effort to ensure that the Courant would help the Capitol employees obtain employment with the new contractor. *Id.* at 4:48-5:5:13.

Pirog obtained an employment application from Pressroom, and he made copies and arranged for each of the eight Capitol employees to fill out an application. ALJD at 6:10-18. On September 26, 2011, Pirog sent Pressroom a package with employment applications from all eight Capitol employees. *Id.* at 6:20-41. It is undisputed that Pressroom received this package. *Id.* at 13:7-9.

**C. The November 8th Meeting Between Pressroom and the Capitol Employees.**

On November 8, 2011, Pressroom's Sierra McSharry contacted Capitol's site supervisor and asked him to set up a meeting that day with six of the eight Capitol employees. Pressroom had apparently already decided not to consider two of the eight employees, Eddy Williams and Ramon Garcia. McSharry testified that Gulotta had provided her with negative information about Williams and Garcia, although Gulotta denied giving any opinions, recommendations, or information about any of the Capitol employees. TR 13:40-48; 12:28-31.

On November 8, 2011, McSharry and her father, Pressroom's Vice President, Steve Lilledahl, met with five of the Capitol employees at approximately 7:00 p.m. ALJD at 7:22-23. One of the Capitol employees told McSharry and Lilledahl that a sixth worker, Daniel Korzeniecki, was not present because his shift did not start until later that night. *Id.* at 7:25-27.

The ALJ credited the testimony of Union shop steward Epifania DeJesus, who testified that Lilledahl told the workers that Pressroom does not work with unions, does not deal with unions and does not want a union at all.<sup>1</sup> ALJD at 7:44-45; 8:44-46. Transcript of Hearing ("TR") at 520:22-521:7; 539:23-540:8. Lilledahl admitted the substance of those remarks: "I would have introduced us and explained that we were non-union because I knew that they were [union]. I didn't want them disillusioned or not understanding what we were offering them." ALJD at 8:48-51.

At the November 8th meeting, in addition to informing the Capitol employees of its intent to operate non-union, Lilledahl informed the workers that Pressroom intended to pay the workers \$9.00 an hour with no benefits. ALJD at 7:34-36. Then Lilledahl told the workers to take a few days to think about whether they were interested in working for Pressroom. *Id.* at

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<sup>1</sup> Pressroom has not excepted to this finding; it has only excepted to the ALJ's conclusion that Lilledahl's statements violated Section 8(a)(1).

8:10-11. McSharry distributed her business card to the workers, and told them to contact her if they were interested. *Id.* at 8:13-15.

**D. Pressroom's Decision Not to Hire the Capitol Employees.**

The Capitol workers got together and decided they wanted to pursue employment with Pressroom. ALJD at 8:20-23. Two workers who spoke English best, Razmik Hovhannisyan and Epifania DeJesus, called on behalf of their co-workers. *Id.* at 8:28-34. Hovhannisyan and DeJesus had trouble getting through to McSharry, but DeJesus left a voice mail message for McSharry telling her that all the Capitol employees were interested in employment with Pressroom, and Hovhannisyan spoke to McSharry on the phone and told her that he was accepting employment on behalf of all of his co-workers. *Id.* McSharry told Hovhannisyan that Pressroom was still considering its options. *Id.* at 8:34-35.

Lilledahl admitted that Pressroom normally hires the existing workforce when it starts up a new job. ALJD at 30:51-52. Here, Pressroom has offered a series of shifting explanations for why it did not adhere to its standard practice. In the February 21, 2012 position statement it submitted to the Region, Pressroom identified three reasons why it did not hire the Capitol employees: (1) Capitol employees were not happy with the compensation that Pressroom offered; (2) "Pressroom was concerned that these individuals would not be willing to work a part-time position for any length of time as they had previously worked full-time at Capitol;" and (3) the employees Pressroom hired "had a willingness to be flexible with the demands that Pressroom places on its employees." ALJD at 21:5-19. Conspicuously absent from the position statement is any mention of "shadowing" the workers, or anything about the Capitol employees working too slowly. *Id.* at 21:50-22:1.

Even at the hearing, Lilledahl and McSharry offered shifting explanations for their

decision not to hire any of the Capitol employees. McSharry said that when Hovhannisyan told her that the workers were ready to accept the jobs, she didn't hire them right away "because there were some issues as far as the flexibility that they would have as employees for us." ALJD at 14:16-24. But, later she admitted that the "flexibility" issue was not the reason Pressroom decided not to hire the Capitol employees. *Id.* at 16-24.

In the end, Pressroom offered a single explanation for its decision not to hire the Capitol employees. Lilledahl and McSharry claimed that they "shadowed" the Capitol employees and decided that the workers moved too slowly. ALJD at 12:46-13:2. While Lilledahl and McSharry's testified that they shadowed the employees for two or three nights, the ALJ found that they only shadowed the employees for a single night. *Id.* at 34:7-14. Moreover, the ALJ found that "the purpose of the shadowing was not to assess performance of Capitol Cleaning workers to determine whether or not to hire them but to observe their work to see how they operate to enable the employees hired by Respondent to do their work." *Id.* at 34:3-6. In fact, Lubowicka was in Poland at the time the shadowing occurred, and Pressroom presented no evidence that it had shadowed Korzeniecki. *Id.* at 34:16-28. The ALJ found that this failure to shadow two of the Capitol employees further undermined Pressroom's claim that it did not hire the discriminatees as a result of the shadowing. *Id.* at 34:28-31.

**E. Pressroom Slaps Together a Crew to Staff the Building.**

Instead of hiring the Capitol employees, Pressroom engaged in what the ALJ described as "a frenzied hiring effort to recruit, screen and train a new workforce" in time to take over the account on December 12th. ALJD at 33:8-11. Most of the employees that Pressroom hired had little or no experience in the janitorial field. ALJD at 16:34-19:14. For instance, Madelyn Castro's only relevant experience consisted of cleaning her own home. *Id.* at 19:13-14. At least

three of the workers that Pressroom initially hired were fired within a few weeks. *Id.* at 18:12-15. Anticipating this high turnover, Pressroom hired one employee, Lizzette Escobar even though Escobar was not available to start right away due to medical issues. *Id.* at 18:5-8.

**F. Pressroom’s Supervisor Threatens Employees.**

Three Pressroom employees testified that in January and February 2012, Francisco Teran, who was then the on-site supervisor for Pressroom, repeatedly threatened the employees that they would be fired if they talked to Local 32BJ representatives. ALJD at 9-10. Teran further told the workers that the crew that used to work had the union and that’s why they weren’t working at the Hartford Courant. *Id.* at 9:17-19.

Rosario testified that the third time Teran threatened him, Teran said he was going to call McSharry to tell her that Rosario had been talking to the Union. ALJD at 10:33-35. The next day, Teran told Rosario that he did call McSharry and McSharry told him that Rosario had a right to talk to the Union. *Id.* at 10:37-40. McSharry denied that Teran ever spoke to her about the Union in February 2012. *Id.* at 10, n. 10.

**III. ARGUMENT**

**A. Pressroom Has Waived Exceptions to Virtually All of the ALJ’s Findings of Fact.**

The Board’s rules provide that “[a]ny exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived.” 29 C.F.R. § 102.46(b)(2). Here, Respondent submitted only ten exceptions to the ALJ’s decision. In some cases, Pressroom has objected to conclusions drawn by the ALJ, but it has not excepted to the factual findings underlying those conclusions. For instance, Pressroom’s first exception is to the finding at page 26, lines 7-12 that comments made by Lilledahl on November 8th were

coercive in violation of Section 8(a)(1) of the Act. Notably, Pressroom has not excepted to the ALJ's finding as to the substance of those remarks.

While Pressroom has only specifically raised ten exceptions, it has made assertions in its brief that go beyond those exceptions. For example, at pages 5 and 6 of its brief, Pressroom makes assertions about the "shadowing" of the Capitol employees that are at odds with the findings of the ALJ concerning shadowing, yet Pressroom did not take exception to any of the ALJ's factual findings regarding the shadowing.

The Board should only consider the ten exceptions that Pressroom has specifically urged, and, accordingly, it should disregard arguments in the brief that go beyond those exceptions.

**B. Pressroom Unlawfully Refused to Hire the Capitol Employees In Order to Avoid a Bargaining Obligation.**

The ALJ found "compelling evidence" that the decision not to hire the six discriminatees was "motivated by antiunion animus." ALJD at 29: 27-29; 31:13-15. The ALJ further found that Pressroom fell "far short" of meeting its burden to establish "that it would have taken the same action absent their union activities and support." *Id.* at 31:17-19. Pressroom offers several arguments as to why the ALJ was wrong, but each argument is meritless.

In *Planned Building Services*, 347 NLRB 670 (2006), the Board set forth the standard to apply in cases where an employer is accused of refusing to hire its predecessor's employees to avoid a bargaining obligation. Among the factors that can be used to establish an 8(a)(3) violation in these circumstances are: (1) evidence of union animus; (2) lack of a convincing rationale for refusing to hire the predecessor's employees; (3) inconsistent hiring practices; (4) overt acts or conduct evidencing a discriminatory motive; and (5) evidence that the employer conducted its hiring in a manner precluding the predecessor's employees from being hired as a majority of the workforce. *Id.* These factors are not intended to be exhaustive and the absence

of any one factor is not determinative. Indeed, direct evidence of animus is frequently not present; rather, the structure of the hiring scheme – which is designed to conceal the underlying animus – is often the best (and only) evidence of the successor employer’s unlawful motivation. *Flour Daniel, Inc.*, 304 NLRB 970, 970 (1991).

Here, the ALJ found each of these factors was present, although he focused primarily on the first two. Pressroom similarly focuses its exceptions on the first two factors, and we will do the same.

**1. Pressroom’s Union Animus.**

In finding that Pressroom harbored animus toward the Union, the ALJ relied in part on the statements by Lilledahl at the November 8th meeting that Pressroom is non-union, does not work with unions, does not deal with unions, and does not want a union at all. In arguing that this is not sufficient evidence of animus, Pressroom relies heavily on the decision of the divided Fifth Circuit panel in *Brown & Root, Inc. v. NLRB*, 333 F.3d 628 (5th Cir. 2003), but the ALJ convincingly distinguished that case. In *Brown & Root*, in response to a question from an employee, the project manager told workers that “Brown & Root was a non-union company and was going to stay that way,” and if employees came to work at Brown & Root, they would be non-union. *Id.* at 634-35. After correctly noting that he was bound by Board law and not the law of the Fifth Circuit, the ALJ pointed out two key differences between *Brown & Root* and the instant case. In *Brown & Root*, the statement was made in a context where Brown & Root already employed 200 non-union employees at the same facility so even if Brown & Root had hired the predecessor’s 70 union employees, its non-union status would not change. Thus, the statement was essentially a statement of fact. By contrast, here, Pressroom has not taken exception to the ALJ’s finding that “there can be no question that the predecessor’s bargaining

unit at the Hartford Courant is an appropriate unit.” ALJD at 25:51-52. Thus, in the absence of discrimination, Pressroom would not know whether it would be non-union until it hired its workforce. In addition, in *Brown & Root*, the statement about the company’s union status only came in response to a question from an applicant whereas here Lilledahl’s comments were unsolicited.

Pressroom also relies on cases outside the successorship context where the Board has explained that it is simply a non-coercive factual statement for a non-union employer to inform workers that it is non-union. But, in making its argument, Pressroom simply ignores *Kessel Food Markets*, 287 NLRB 426, 429 (1987), and subsequent cases where the Board has explained that it is coercive for a would-be successor to tell applicants that it will be non-union because in a potential successorship situation, “the employer does not know whether it will be union or nonunion until it has hired its workforce.” Moreover, as the ALJ explained, the D.C. Circuit enforced a Board’s decision holding that a successor employer’s statement is coercive even where the employer says only that it “intends” or “expects” that it will operate non-union. *Williams Enterprises*, 301 NLRB 167, 167, 173-4 (1991), *enf’d*. 956 F.2d 1226, 1234-35 (D.C. Cir. 1992).

Further, the ALJ did not simply rely upon Lilledahl’s statement in support of his finding of animus. The ALJ also relied upon the statement made by Pressroom supervisor Teran that the Capitol employees had not been hired because of their union status. While Pressroom took exception to the conclusion that Teran’s statements were evidence of animus, it did not take exception to the finding that Teran made the statement. Nor has Pressroom made any attempt to distinguish this case from *TCB Systems, Inc.*, 355 NLRB No. 162 (2010), where the Board found that it was reasonable to infer that a supervisor knew why hiring decisions had been made even if

he did not make them. *Id.*, slip opinion at 3. Moreover, the Board has “often ... found after-occurring conduct and statements to shed light on motive.” *Dresser-Rand Co.*, 358 NLRB No. 97, slip op. at 1, n. 1 (2012). In *K.W. Electric, Inc.*, 342 NLRB 1231 (2004), to support its finding that an employer illegally terminated an employee because of his union activity, the Board relied on a statement made by a leadperson three weeks later that the owner “would close the doors before joining the union.” *Id.* at 1231, n. 5. Similarly, in *Tidewater Construction Corp.*, 341 NLRB 456 (2004), when a supervisor asked a union supporter who was hired to replace locked out workers whether he was the “only one that slipped through the cracks,” the Board relied upon that statement as evidence that the lockout was motivated by anti-union animus. *Id.* at 456.

**2. Pressroom’s Shifting Explanations for its Failure to Hire the Capitol Employees.**

It is well-established that an employer’s shifting explanations for its actions is by itself evidence of an unlawful motive. *Commercial Erectors, Inc.*, 342 NLRB 940, 943 (2004). Applying this well-settled law, the ALJ found it “striking that among the myriad reasons” set forth in Pressroom’s position statement to the Region, “there is not one word about any ‘shadowing’ of the former workers or any observations or indeed any criticism of their work performance as a reason for Respondent’s actions.” ALJD at 35:7-10.

Pressroom denies that it has offered shifting explanations, but its denials are contradicted by the very evidence cited in its brief. Pressroom quotes from its position paper where it explained why “the other candidates chosen were a better fit for the work and for Pressroom’s demands.” Pressroom’s Exceptions at 13. In that position paper, Pressroom’s attorney explained, “The Capitol employees were not happy with the compensation. Pressroom was

concerned that these individuals would not be willing to work a part-time position for any length of time as they had previously worked full-time at Capitol.” *Id.*

Not only did the position statement make no mention of the “shadowing,” but it offers explanations for Pressroom’s hiring decisions that Pressroom’s agents disavowed at the hearing. While Pressroom’s attorney represented that Pressroom decided not to hire the Capitol employees because it was concerned that they would not stay at the job “for any length of time,” at the hearing, McSharry admitted that there was “very high turnover” among the employees who were hired, but that this was “normal” due to the low wages that Pressroom offers its employees. TR 499:15-17.

Pressroom’s inconsistent explanations for its hiring decisions would be sufficient by themselves to support a finding that the true motive for not hiring the Capitol employees was unlawful.

3. **Pressroom’s Ultimate Explanation for its Hiring Decisions Also Fails to Satisfy its Burden.**

Even if the Board were to somehow look past the suspicion raised by Pressroom’s shifting explanations for its conduct, Pressroom’s ultimate explanation for its hiring decisions is also not persuasive. Pressroom argues that “[a]fter careful consideration of the applicants, the decision was made that the employees of Capitol would not be able to perform at the speed and efficiency that Pressroom was requiring.” Pressroom Exceptions at 12. Unfortunately for Pressroom, the facts do not support this conclusion. First, it is simply false to say that Pressroom engaged in “careful consideration” of the Capitol employees. As the ALJ found, “[n]either of Respondent’s witnesses presented any specific testimony as to what they observed about the employees’ performance that lead them to conclude that they were working too ‘slow’ to be able to perform the work required by Respondent....” ALJD at 33:20-23. In addition, the ALJ found

that Pressroom never observed two of the six discriminatees, Korzeniecki and Lubowicka. *Id.* at 34:19-31.

In addition, as noted above, Pressroom has not excepted to the ALJ's finding that the "shadowing" was "not done for the purpose of making [hiring] decisions or to evaluate the performance of the prior contractor's employees but to simply see how they conducted its operation." ALJD at 33:35-37. Even if Pressroom had excepted to this finding, the exception would be meritless. Not only did the documentary evidence support this conclusion, but so does common sense. As the ALJ pointed out, if Pressroom intended to shadow the Capitol employees in order to evaluate them, it made no sense to wait until the last minute to do so. In addition, Pressroom's witnesses claimed that the shadowing was significant because the Capitol employees were moving more slowly than Pressroom wanted employees to work. But, Pressroom did not need to observe the Capitol employees to determine that it would want them to move faster. Pressroom knew that they intended to staff the job with fewer full time equivalents than Capitol had used. Pressroom's Exceptions at 9. Thus, it is obvious that Pressroom would require its workers to cover more area in the same amount of time than Capitol did. There was no need to "shadow" workers to figure that out.

Furthermore, treatment of the non-incumbent applicants provides additional support for the ALJ's conclusions. While Pressroom asserts in its brief that "[e]ach applicant hired had relevant work experience," Pressroom's Exceptions at 10, this is simply false. As noted above, the ALJ found that several of the employees that Pressroom hired had no relevant work experience. Moreover, Pressroom did not put any of the other applicants through a trial before hiring them. *See Daufuskie Island Club & Resort*, 328 NLRB 415, 421 (1999) *enf'd*. 221 F.3d 196 (D.C. Cir. 2001) ("An employer acts unlawfully if it disparately applies hiring criteria to

union employees”). In fact, Pressroom hired employees with the expectation that many of them would not work out; McSharry even admitted that the “very high turnover” Pressroom experienced was “normal.” TR 499:15-17.

The ALJ properly found that Pressroom did not meet its burden to establish that it would not have hired the Capitol employees even in the absence of a discriminatory motive.

**C. Pressroom Violated Section 8(a)(5) of the Act by Failing to Recognize and Bargain With Local 32BJ**

**1. Pressroom Was a *Burns* Successor to Capitol.**

Under *NLRB v. Burns International Security Services*, 406 U.S. 272 (1972) and *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987), a successor employer has an obligation to recognize and bargain with the union representing the predecessor’s employees where a majority of employees in the bargaining unit were employed by the predecessor. This bargaining obligation attaches provided there is “substantial continuity” between the predecessor and the successor. *Fall River*, 482 U.S. at 43. The substantial continuity analysis is made from the employees’ perspective. *Id.*

Here, while Pressroom challenges the ALJ’s conclusion that there was substantial continuity between Capitol and Pressroom, it makes no attempt to distinguish any of the cases relied upon by the ALJ. Nor has Pressroom cited any additional cases to support its argument. As the Board explained in *Good N’ Fresh Foods*, 287 NLRB 1231, 1235 (1988) “this is not a case where a steel mill was converted into a bakery.” Pressroom’s argument that there was no substantial continuity is frivolous.

**2. Local 32BJ Was Not Required to Make a Bargaining Demand.**

Pressroom’s argument that it cannot be required to bargain with Local 32BJ because the Union never made a bargaining demand is similarly frivolous. The ALJ cited four cases in

support of his conclusion that no bargaining demand is necessary where an employer has unlawfully refused to hire the predecessor's employees. ALJD at 39:31-35. Again, Pressroom has made no attempt to distinguish those cases, nor has it pointed to any additional cases that support its argument.

**D. The ALJ Properly Found That Any Remedy Must Include Korzeniecki and Lubowicka.**

Pressroom has made a half-hearted effort to reduce its liability by arguing that Daniel Korzeniecki should not be treated as a discriminatee. Exception #7. In addition, while Pressroom's 11th Exception is incoherent, it appears to be an attempt to limit its liability with respect to Mariana Lubowicka.

As a starting point, it is undisputed that Korzeniecki and Lubowicka submitted applications to Pressroom along with the other Capitol employees. ALJD at 6:20-50. While Pressroom argues that Korzeniecki's failure to attend the November 8th meeting disqualified him from consideration, Pressroom never even confirmed that Korzeniecki was made aware of the meeting. TR 425:17-426:21. In analogous circumstances, the Board has held that when it is futile for employees to file applications, an employer is barred from raising the absence of an application as a defense to a refusal to hire. *See, e.g., Shortway Suburban Lines*, 286 NLRB 323, 326 (1987). Here, there is no reason to believe that Korzeniecki's attendance at the November 8th meeting would have made any difference since none of the workers who attended the meeting were hired.

Similarly, the fact that Lubowicka was in Poland from the end of November to December 18, 2011 (TR 72:13-23) had no bearing on Pressroom's refusal to hire her. In fact, the proof of this is that Pressroom has offered no evidence that it was aware of this fact before Lubowicka testified about her trip to Poland at the hearing. Moreover, Pressroom's treatment of other

workers demonstrates that Lubowicka's absence from the country on December 12th would not have prevented Pressroom from hiring her. Lizzette Escobar was not available on December 12th due to medical issues, but that did not stop Pressroom from hiring her. ALJD at 18:5-10. Furthermore, additional positions opened up soon after December 12th due to Pressroom's high turnover.

The ALJ correctly found that Pressroom refused to hire Korzeniecki and Lubowicka for the same reason it refused to hire the other four discriminatees – due to their affiliation with Local 32BJ.

#### **IV. CONCLUSION**

The ALJ's factual findings are amply supported by the evidence in the record and his legal conclusions are entirely consistent with Board precedent. Accordingly, except as noted in the Charging Party's cross exception, the ALJ's rulings, findings, and conclusions, should be affirmed and his recommended order should be adopted.

Dated: August 16, 2013

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**Certificate of Service**

I hereby certify that a copy of the foregoing document, entitled **Charging Party SEIU Local 32BJ's Answering Brief to Respondent's Exceptions**, was served on this 16th day of August 2013, via electronic mail, on the following parties:

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