

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

**BCI COCA-COLA BOTTLING
COMPANY OF LOS ANGELES**

and

Case 28-CA-022792

WAYNE ABREU, An Individual

ACTING GENERAL COUNSEL'S EXCEPTIONS

Counsel for the Acting General Counsel (General Counsel), pursuant to Section 102.46 of the Board's Rules and Regulations, files the following exceptions to the supplemental decision issued by Administrative Law Judge William Kocol (ALJ) issued in his decision dated August 29, 2013 [JD(SF)-43-13] (ALJD), in the captioned case:

1. The ALJ's erroneous decision to continually rely on deferral policies that do not apply to the facts of this case and his clear and unmistakable disdain for the case handling decisions of the Regional Director, supported by the Board. In support of this exception, the General Counsel relies upon the ALJD language where the ALJ infers that the General Counsel and the Board have "flippantly ignored" deferral policies and arguments set forth in the accompanying brief in support, the arguments adduced during the hearing, and the existing record exhibits.

2. The ALJ's erroneous statement that the Union agreed with Respondent's interpretation of the collective bargaining agreement, making this an ideal case for a *Collyer* deferral. In support of this exception, the General Counsel relies upon the arguments set forth in the accompanying brief in support, the arguments adduced during the hearing, and the existing record exhibits.

3. The ALJ's clear and unmistakable disagreement with the Board's remand order of April 30, 2013, and his unwillingness to follow the Board's order with regard to taking evidence on the Section 8(a)(1) violations alleged in the Complaint. In support of this exception, the General Counsel relies upon the Board's order, arguments set forth in the accompanying brief in support, the arguments adduced during the hearing, and the existing record exhibits.

4. The ALJ's finding that the Section 8(a)(1) violations are subsumed as part of the deferral in this case. In support of this exception, the General Counsel relies upon the Board's order, arguments set forth in the accompanying brief in support, the arguments adduced during the hearing and the existing record exhibits and testimony.

5. The ALJ's limiting of the scope of the evidence as to whether or not the grievance settlement met the Board's deferral standards. In support of this exception, the General Counsel relies upon the Board's order, arguments set forth in the accompanying brief in support, the arguments adduced during the hearing and the existing record exhibits and testimony.

6. The ALJ's factual determination that the Union ultimately agreed with Respondent's interpretation of the contract, conducted an investigation while speaking with Charging Party Wayne Abreu and other employees, and concluded that the grievances did not have merit. In support of this exception, the General Counsel relies upon the testimony of Herb Perez (Tr. 89-94), Abreu (Tr. 119-123), and existing record exhibits.

7. The ALJ's determination that the parties stipulated that a withdrawal was solicited in the Charge filed against the Union in Case 28-CB-074569, so therefore, there is no evidence that the Union breached its duty of fair representation in settling the grievances as it

did. In support of this exception, the General Counsel relies upon the testimony of Abreu (Tr. 138-139) and existing record exhibits.

8. The ALJ's determination that there is nothing repugnant about the failure of the settlement agreement entered into by Respondent and the Union. In support of this exception, the General Counsel relies upon the testimony of Abreu (Tr. 123-124) and existing record exhibits.

9. The ALJ's determination that the charge should have been deferred under *Collyer* instead of *Dubo*, that his only recourse is to dismiss the charge because the Union failed to process the grievance to arbitration. In support of this exception, the General Counsel relies upon the argument in the accompanying brief, arguments on the record and the existing record exhibits.

10. The ALJ's failure to apply the Independent Stave analysis to the Board's deferral policy and his statement that he will not do so because the General Counsel did not present any arguments as to why he should do so. In support of this exception, the General Counsel relies upon the post-hearing brief and existing record exhibits.

Dated at Phoenix, Arizona, this 26th day of September 2013.

Respectfully submitted,

/s/ Sandra L. Lyons

Sandra L. Lyons
Counsel for the Acting General Counsel
National Labor Relations Board, Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Telephone: (602) 640-2133
Facsimile: (602) 640-2178
Email: Sandra.Lyons@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S EXCEPTIONS in BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, Case 28-CA-022792 was served by E-Gov, E-Filing and by E-mail, on this 26th day of September 2013, on the following:

Via E-Gov, E-Filing

Gary W. Shinnery, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, NW, Room 11602
Washington, DC 20570-0001

Via Electronic Mail

Douglas M Topolski, Attorney at Law
Ogletree Deakins Nash
Smoak & Stewart PC
1909 K Street NW, Suite 1000
Washington, DC 20006-1152
Email: douglas.topolski@ogletreedeakins.com

Sabrina A. Beldner, Attorney at Law
Gary Marshall, Attorney at Law
Mcguire Woods LLP
1800 Century Park E, Fl 8
Los Angeles, CA 90067-1501
Email: sbeldner@mcguirewoods.com
Email: gmarshall@mcguirewoods.com

Mr. Wayne Abreu
34 South 226th Lane
Buckeye, AZ 85326
Email: waturk2@yahoo.com

Stanford Dubin, Associate Counsel
United Industrial, Service, Transportation,
Professional and Government Workers
of North America
5201 Auth Way
Camp Springs, MD 20746-4211
Email: sdubin@seafarers.org

/s/ Sandra L. Lyons
Sandra L. Lyons
Counsel for the Acting General Counsel
National Labor Relations Board, Region 28
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Telephone: (602) 640-2133
Facsimile: (602) 640-2178
Email: Sandra.lyons@nlrb.gov