

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

MSR INDUSTRIAL SERVICES, LLC,

Respondent,

Case Nos. 07-CA-106627
07-CA-106032

and

LOCAL 25, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL, ORNAMENTAL
AND REINFORCING IRON WORKERS,
AFL-CIO,

Charging Union.

**CHARGING PARTY'S EXCEPTIONS TO THE
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

David R. Radtke
McKnight, McClow, Canzano,
Smith & Radtke, P.C.
Attorneys for Iron Workers Local 25
400 Galleria Officentre, Suite 117
Southfield, MI 48034
248-354-9650
dradtke@michworklaw.com

Charging Party, Local 25, International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, AFL-CIO (hereinafter “Local 25” or “Union”), by its attorneys and pursuant to Section 102.46 of the Board’s Rules and Regulations, hereby files Exceptions to the Decision of the Administrative Law Judge (“ALJ”) in the above-captioned matter. In support of these Exceptions, Local 25 also concurrently files a Brief in Support of its Exceptions to the Decision of the Administrative Law Judge.

1. Local 25 excepts to the ALJ’s application of the contract rule that ambiguous terms will be construed against the drafter of the contract when the non-drafter’s interpretation is reasonable because the applicable contract is not ambiguous and renewal clauses are subject to strict construction under Board law. ALJD p. 6, lines 21-23.

2. Local 25 excepts to the ALJ’s application of the contract rule that ambiguous terms will be construed against the drafter of the contract because the relevant section of the 2010 Riggers’ Agreement term is not ambiguous. ALJD p. 6, lines 23-25

3. Local 25 excepts to the ALJ’s conclusion that MSR is not bound by the terms of the 2013 Riggers’ Agreement because the ambiguity as to which provision of the 2010 Riggers’ Agreement inures to the detriment of the Union because the 2010 Riggers’ Agreement is not ambiguous. ALJD p. 6, lines 23-27.

4. Local 25 excepts to the ALJ’s conclusion that the MSR’s interpretation of the 2010 Riggers’ Agreement is reasonable and the tension between Section XXVI and the “me too” signature page must be resolved against the Union, because there is no tension between Section XXVI and the “me too” signature page. ALJD p. 6, lines 29-32.

5. Local 25 excepts to the ALJ's finding that if Section XXVI of the 2010 Riggers' Agreement takes precedence over the "me too" signature page, the 2010 Riggers' Agreement was only renewed by one year, and not until May 31, 2019, if MSR is bound by its failure to send the Union a certified letter. ALJD p. 6, lines 34-38.

6. Local 25 excepts to the ALJ's finding that the equities in this case clearly dictate that MSR is not bound by the 2013 Riggers' Agreement because equities are not a proper factor to be taken into account in contract interpretation. ALJD p. 6, lines 33-34.

7. Local 25 excepts to the failure of the ALJ to find that MSR locked out the bargaining unit employees on May 31, 2013. ALJD p. 7, lines 29-30.

8. Local 25 excepts to the ALJ's failure to find that MSR failed to respond to bargaining unit employees' attempt to contact MSR in June 2013 which shows MSR locked out the employees.

9. Local 25 excepts to the ALJ's conclusion that requiring employees to work under changed wages, benefits and terms and conditions of employment instead of the wage and benefit package in the Riggers' Agreement does not constitute sufficiently burdensome working conditions to cause employees to quit. ALJD p. 7, lines 14-18.

10. Local 25 excepts to the ALJ's conclusion that the employees were not constructively discharged because they could have, after consulting with the Union, gone on strike, continued working with the Union's permission or possibly continued working after resigning from the Union, because the bargaining unit employees were locked out. ALJD p. 7, lines 19-23.

11. Local 25 excepts to the ALJ's finding that MSR was only required to maintain the terms of the 2010 Riggers' Agreement for 60 days following its May 31, 2013 notification to FMCS. ALJD p. 8, lines 21-23.

12. Local 25 excepts to the ALJ's finding that by allowing unit employees to return to work on June 27, 2013 under different conditions than those specified in the 2010 Riggers' Agreement, the Union waived any objections it had to those changes after that date. ALJD p. 8, lines 29-38.

13. Local 25 excepts to the ALJ's failure to find that MSR has continued to violate §8(d)(3) because it has never notified Michigan's state mediation agency of the existence of a dispute.

14. Local 25 excepts to the ALJ's failure to require MSR to restore the terms and conditions to those in place under the 2010 Riggers' Agreement if the Board finds that MSR's notice to terminate the 2010 Riggers' Agreement was effective.

15. Local 25 excepts to the ALJ's failure to find that back pay and benefits are owed to Local 25 members after July 30, 2013.

16. Local 25 excepts to the ALJ's failure to find that MSR's use of supervisor Clint Goettl to do bargaining unit work did not violate the Act.

WHEREFORE, for the reasons stated herein and the reasons set forth in Local 25's Brief in Support of Exceptions to the Decision of the Administrative Law Judge, the Union respectfully requests that the Board reverse the above-referenced findings and conclusions of the ALJ and order a remedy in accordance with the Complaint issued in this matter.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,
SMITH & RADTKE, P.C.

By: /s/ David R. Radtke

DAVID R. RADTKE (P47016)

Attorneys for Charging Party

400 Galleria Officentre, Suite 117

Southfield, MI 48034

(248) 354-9650

dradtke@michworklaw.com

Dated: June 4, 2014

CERTIFICATE OF SERVICE

I certify that on June 4, 2014, I electronically served the foregoing paper on the following parties:

David M. Cessante
Kurt M. Graham
Attorneys for Respondent

Kelly A. Temple
Counsel for the General Counsel

/s/ David R. Radtke
DAVID R. RADTKE
Counsel for the Charging Union