

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

ADT LLC d/b/a ADT SECURITY SERVICES

and

Case 5-CA-127502

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 2, AFL-CIO

**RESPONDENT'S ANSWERING BRIEF
TO CHARGING PARTY'S CROSS EXCEPTIONS**

The Administrative Law Judge issued his decision on November 12, 2014. Counsel for the General Counsel filed exceptions and a brief in support of exceptions on December 10, 2014. The Charging Party ("Union") did not originally file exceptions, but on December 24, 2014, filed cross exceptions to the Administrative Law Judge's decision. Respondent timely filed an Answering Brief to General Counsel's Exceptions on December 30, 2014. Respondent now files this answering brief to the Union's cross exceptions.

The Union's cross exceptions mirror the exceptions filed by Counsel for the General Counsel. Rather than repeat here the facts of this case, Respondent respectfully refers the Board to Respondent's Answering Brief to General Counsel's Exceptions for a recitation of those facts. Further, to the extent that the Union's cross exceptions and brief in support repeats the arguments raised by the General Counsel, those arguments are treated in Respondent's Answering Brief to General Counsel's exceptions and will not be repeated here. However, the Union's Brief in Support of Exceptions requires additional comment, which we set forth below.

1. Much of the Union's supporting brief outruns its exceptions by raising issues with the General Counsel's initial determination in this case that the HVCI language in the parties'

CBA amounts to a clear and unmistakable waiver of the Union's right to require bargaining by Respondent over Respondent's decision to convert unit employee's pay from the HVCI commission program to hourly pay under the contracts. The Union lost this argument at the regional office level and lost it on appeal to the General Counsel's Office of Appeals. (See Respondent's Answering Brief to General Counsel's Exceptions, at pp. 1 - 4). As a result, the complaint against Respondent raised only allegations of refusal to provide information, not broader allegations in the Charge of refusal to bargain or unlawful unilateral changes. It is well settled that the Office of General Counsel controls the theory and allegations of a complaint for violations of the Act, not the charging party. Board law holds that a charging party cannot validly raise exceptions that violate these tenets. E.g., Florida Steel Corporation, 223 NLRB 174, 175 (1976); Kimtruss Corporation, 305 NLRB 710, 711 (1991); Desert Aggregates, 340 NLRB 289, 289 n. 2 (2003). Accordingly, the Union's exceptions must be found without merit.

2. The Union's brief also posits that "allowing ADT to refuse to provide information on its 'business needs' that it claims 'dictated' the pre-condition of the contract clauses at issues places [the Union] in an unfair position with regard to any burden of proof it needs to show a violation of the CBAs as to the HVCI conditions and wages" (Supporting Brief at p. 8). It is difficult to take this argument seriously. As the General Counsel himself (as well as the ALJ) found, the HVCI language in the CBAs is a clear and unmistakable waiver of the Union's right to require that the reclassification of employees from HVCI to hourly be bargained. The contracts give the Company the unilateral right to reclassify employees from HVCI to hourly, or vice-versa, as the Company in its business judgment deems necessary. There is no other way to read the contract language without contravening the General Counsel's pre-complaint finding

that the contract language constitutes a clear and unmistakable waiver. If the Union wants to expend its resources (doubtful at best) seeking to arbitrate the question whether the changes that ADT made violated the CBA it is free to do so, and nothing in the ALJ's decision impedes the Union in that effort. As the evidence shows, the Union has already been provided information by ADT as to why it decided to reclassify the employees; all that the ALJ did was hold that due to the breadth of the contractual waiver, "further information as to the business justification for the change" need not be provided.

CONCLUSION

The Union's cross exceptions are without merit and should be overruled or otherwise rejected.

Respectfully submitted,



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Attorneys for Respondent

Dated: January 7, 2015

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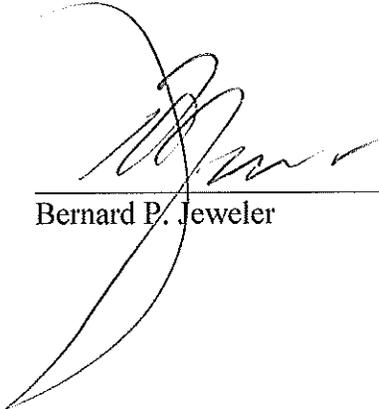
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Respondent's Answering Brief to Charging Party's Cross
Exceptions was sent this day by electronic mail to the following:

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Bernard P. Jeweler

Dated: January 7, 2015