UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

UPS SUPPLY CHAIN SOLUTIONS, INC.	:	
And	:	**Case 12-CA-113671**
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 769	:	

RESPONDENT UPS SUPPLY CHAIN SOLUTIONS INC.'S ANSWERING BRIEF IN OPPOSITION TO THE CROSS-EXCEPTION OF GENERAL COUNSEL

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PRELIMINARY STATEMENT

Pursuant to Section 102.46 of the Board's Rules and Regulations, Respondent UPS Supply Chain Solutions, Inc. ("SCS") respectfully submits this Answering Brief to General Counsel's Cross-Exception to the Administrative Law Judge's ("ALJ") Decision (the "Decision") rendered on November 28, 2014.

Like Lady Macbeth and her spot, in this case counsel for the General Counsel has done everything possible to erase a singular and undisputed fact: on May 10, 2013, after receiving the Flexible Benefits Plan ("Flex Plan") Summary of Plan Descriptions ("SPD"), which contained five Summary of Material Modifications ("SMM") — notifications of prior years' changes to the Flex Plan — Local 769's Mr. Eduardo Valero stated:

> There are changes in the health insurance nationwide. It is my understanding that this will affect SCS and ***they are going to another type of insurance.***

(Respondent's Exhibit 15). (*emphasis added*). It is clear from this statement that Local 769 was very well aware of and expected annual changes to the healthcare plan as of May 10, 2013.

In fact, this statement by Mr. Valero, that he understood SCS was "going to another type of insurance", utterly demolishes General Counsel's contentions that Local 769 did not know about or acquiesce in the established Flex Plan past practice of annual changes. Rather, the evidence is that Mr. Valero knew the Flex Plan would change, and he so stated on May 10, 2013, never objecting.[1]

Indeed, it was with the specific knowledge that the Flex Plan would change, and with Local 769's documented possession and knowledge of 5 separate SMM's outlining Flex Plan changes for several prior years, that Local 769 on July 23, 2013 voluntarily agreed to defer bargaining over economic items after non-economic matters had concluded. (Tr. 119, 191-3). It is undisputed that the parties' agreement was to defer bargaining of economic terms. This is not a waiver argument as counsel for the General Counsel contends. The parties had every right to decide on the order of bargaining and did so by voluntarily entering into the agreement.

The undisputed evidence in this case is that for a decade prior to the change to healthcare involved here there was an established past practice with the Flex Plan of annual changes to it. (Tr. 148; Respondent's Exhibits 3-14). The ALJ's Decision issued no contrary ruling or finding.

The undisputed evidence is that annually all employees at the SCS Miami facility were notified of these Flex Plan changes. (Respondent's Exhibits 3-14). The ALJ did not rule otherwise.

It is uncontradicted that over 90% of the bargaining unit members involved here had been employed at that SCS Miami facility for over 5 years, prior to Local 769's certification and

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[1] Likewise, this Board's opinion in *Alan Ritchey*, 359 N.L.R.B. No. 40 (2012) does not vanish because counsel for the General Counsel refuses to discuss it. Under *Alan Ritchey*, there was no violation here. (SCS's obligation pursuant to *Alan Ritchey* was to maintain the status quo. Sometimes this obligation may entail changes in terms and conditions of employment when those changes are an established part of the status quo.) 359 N.L.R.B. No. 40 at 5.

afterward, and knew of and were subject to these annual changes. (Tr. 99). Nothing in the ALJ's Decision is to the contrary.

And it is incontrovertible that the official notices of these annual changes — the "SMMs" — were delivered to Local 769 on May 10, 2013. (Respondent's Exhibits 3, pp. 3-15; Respondent's Exhibit 15). Again, the ALJ did not find otherwise.

Thus, try as counsel for General Counsel may, that evidence stands. The uncontradicted record evidence is that Local 769's chief negotiator, Mr. Valero, specifically stated on May 10, 2013 that he understood the Flex Plan would be changing for 2014. There is no contrary ALJ finding. Charging Party knew about and acquiesced in the indisputable past practice.

The reasons detailing how these facts establish that Respondent did not violate the Act are set forth in Respondent's Brief in Support of Its Exceptions.

ARGUMENT

As established in Respondent's Brief in Support of Its Exceptions, there has been no violation of the Act here. Accordingly, General Counsel's Cross Exception directed to a remedy, when there is no violation, should be denied.

CONCLUSION

The Cross Exception of General Counsel should be denied.

Respectfully submitted,

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Dated: March 10, 2015

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

UPS SUPPLY CHAIN SOLUTIONS, INC.	:	
and	:	**Case 12-CA-113671**
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 769	:	

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the foregoing document, **RESPONDENT UPS SUPPLY CHAIN SOLUTIONS INC.'S ANSWERING BRIEF IN OPPOSITION TO THE CROSS-EXCEPTION OF GENERAL COUNSEL**, served by email on the 10th day of March, 2015 on the following:

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