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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STRATEGIC RESOURCES, INC.,	)		
	)	Cases	19-CA-070217
and	)		19-CA-070224
	)		19-CA-072173
INTERNATIONAL ASSOCIATION OF	)		19-CA-072184
MACHINISTS AND AEROSPACE WORKER,	)		19-CA-077901
AFL-CIO, DISTRICT LODGE W-24.	)		19-CA-088406
	)		19-CA-103576
	)		19-CA-104377
	)		19-CA-111874
	)		
	)		

**RESPONDENT’S REPLY TO  
COUNSEL FOR THE GENERAL COUNSEL’S ANSWERING BRIEF**

Respondent Strategic Resources, Inc. (“Respondent”), pursuant to Section 102.46(h) of the Board's Rules and Regulations, files the following Reply to the Counsel for the General Counsel’s Answering Brief to Respondent’s Exceptions to the Administrative Law Judge’s Decision.<sup>1</sup>

<sup>1</sup> Respondent takes issue with a number of Counsel for the General Counsel’s overstatements and, presumably, intentional misstatements regarding Respondent’s position at this juncture in the proceedings. Primarily, Respondent notes that by deciding not to challenge certain of the Administrative Law Judge’s conclusions, Respondent does not necessarily “concede” or “admit” that it “committed numerous violations of §§ 8(a)(1) and (5) and 8(d) of the National Labor Relations Act” as Counsel for the General Counsel asserts. Regardless, in an effort to move this matter to resolution, Respondent has filed only one (1) exception to the ALJ’s conclusions regarding an alleged unilateral change, and has requested clarification of two (2) provisions in the recommended Order.

1 **1. Counsel for the General Counsel Did Not Prove The Complaint Allegation That**  
2 **Respondent “Altered Its Formula for Calculating Holiday Pay”**

3 Counsel for the General Counsel agrees that “Respondent set its own terms and  
4 conditions of employment [.]” GC Br. 4.<sup>2</sup> As the General Counsel’s own evidence shows,  
5 Respondent clearly and consistently communicated to employees regarding those initial terms  
6 and conditions through its orientation materials. See GC Ex. 79, P. 32. Further, Counsel for the  
7 General Counsel’s own witnesses confirmed that the initial terms and conditions of employment  
8 had been communicated in the Respondent’s New Hire Orientation Training on April 16, 2011,  
9 where employees confirmed their completion and participation in the training through Training  
10 Attendance Rosters signed by the employee. See R. Ex. 9. Indeed, Respondent’s  
11 communication regarding how holiday pay would be calculated, and an explicit example given  
12 through the New Hire Orientation was unequivocal:

13 A single holiday is prorated based on the hours worked in the prior  
14 workweek. Example: If 20 hours are worked in the week prior to  
15 the holiday, the calculation is the following: (20 hours worked/40  
16 hours in the week) equals a percentage rate of 50%. The  
percentage is applied to the 8 hour holiday. Therefore, the  
employee would receive 4 hours of holiday pay. The maximum  
benefit for any one holiday is 8 hours.

17 GC Ex. 79, P. 32.

18 Neither of Counsel for the General Counsel’s employee witnesses, Ms. Katherine Ausley  
19 and Mr. Joel Davis, testified they were ever told by any SRI supervisor, manager, or  
20 representative that they would receive eight (8) hours’ pay for holidays regardless of their work  
21

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22 <sup>2</sup> Counsel for the General Counsel’s Answering Brief will be referred to as (GC. Br.), with citations to  
23 specific page numbers. References to the ALJD will be designated as (ALJD \_\_:\_\_), including  
appropriate page and line citations. References to the official transcript will be designated as  
(Tr. \_\_:\_\_), including appropriate page and line citations. References to the General Counsel’s  
Respondent’s, and Joint exhibits will be referred to as (GC Ex), (R Ex), and (JX), respectively.

1 the week prior, and neither contradicted Mr. Cox's or Respondent's Director of Human  
2 Resources, Anita Lawson's, testimony regarding communications to new hires. To the contrary,  
3 Ms. Ausley's and Mr. Davis's testimony suggests both were surprised when they were overpaid  
4 for the first three holidays after SRI took over the contract at JBLM. Perhaps most significant is  
5 Ms. Ausley's testimony regarding notice of the overpayment. As she testified, the overpayments  
6 were not identified as consistent with a new policy or any "change" to the standard practice.  
7 Rather, the overpayments were described as "incorrect." Tr. 34:16-20; 35:2-5.<sup>3</sup> See also Tr.  
8 449:19, where Ms. Lawson testified the overpayment was an error.

9         Given Respondent's affirmative communication and training to all incoming employees,  
10 any deviation – *i.e.*, to unilaterally *increase* holiday pay to the maximum of eight (8) hours pay  
11 to all employees, regardless of their part-time status – would itself have been an unlawful  
12 unilateral change. See, *e.g.*, *Mesker Door, Inc.*, 357 NLRB No. 59, slip op. (2011) (unilateral  
13 wage increases and change to bonus violated § 8(a)(5)). But Counsel for the General Counsel  
14 did not allege that "change" because there simply was no change.

15         Counsel for the General Counsel makes much of the fact that the ALJ could not agree  
16 there was a satisfactory answer as to how the erroneous overpayments came to be. GC Br. At 3

17 \_\_\_\_\_  
18 <sup>3</sup>Ms. Ausley testified:

19                 When we got to Labor Day,– we put our eight hours on like we had been doing and we got called and said  
20                 it . . .  
21                 So we put our eight hours in like we had been doing. And then we got called and said it was – incorrect.  
22                 And we had to change it because not all of us worked the 40 hours.

23 TR 34:16-18; 35: 2-4.

Joe Davis testified:

                  I entered my DELTEK for that holiday. I put 8 hours. And I got a phone call from dispatch telling me I  
                  needed to change it.

TR 78:16-18.

1 – 4. But, as discussed above, Counsel for the General Counsel has not proved that anything but  
2 error caused the overpayments. There is no evidence employees were told in any way that the  
3 initial terms of employment had changed in any way. Counsel for the General Counsel did not –  
4 cannot – point to a single document or line of testimony that could support even the suggestion  
5 that Respondent intended, intimated, or otherwise signaled to anyone it had intentionally  
6 “changed” its formula for calculating holiday pay. Indeed, there is no evidence in the record to  
7 explain why Respondent might have even considered deviating from the practice of prorating  
8 holiday pay because 1) Respondent communicated to employees through formal New Hire  
9 Orientation prior to the start of the work , 2) it was a continuation of its predecessor’s (LSG)  
10 policy used for several years , 3) the federal regulations dictated the use of the same method as a  
11 standard practice of holiday proration, and 4) the unit employees – including Counsel for the  
12 General Counsel’s own witnesses – expected this practice of proration to continue with the  
13 Respondent.

14 As SRI took over operations at JBLM, it experienced a period of transition. Tr. 448:7-8.  
15 As Respondent’s witness Anita Lawson credibly testified, the overpayments were likely the  
16 result of issues related to implementing administrative procedures:

17 There are a lot of things that go on in the first few months; there are changes regarding  
18 staffing. If you have different individuals that are trying to ramp up, you're trying to  
19 establish your PMO [Program Management Office].

19 Tr. 449:8 –:11.

20 Thus, as the record evidence shows, and as logic and common sense should confirm, :  
21 there was no change from the initial terms and conditions of employment that Respondent  
22 communicated to employees, nor was there any “change” back to those initial terms and  
23 conditions. Respondent simply stopped overpaying part-time employees after it realized

1 employees had been inadvertently overpaid for the first three holidays. The ALJ's conclusion to  
2 the contrary was erroneous and, therefore, should be reversed.

3 Counsel for the General Counsel's reliance on *LM Waste Service Corp.*, 360 NLRB No.  
4 105, slip op. at 10 (2014)<sup>4</sup> is a bit of a stretch and, in fact, proves too much. In that case, the  
5 "past practice" was established by the employer's conduct "throughout 2011 and 2012" – a *two*  
6 *year* period – and employees' expectations. In this case, the facts show that employees were  
7 overpaid only for the first three holidays over the summer of 2011. While Counsel for the  
8 General Counsel overstates the period of overpayments as an "approximately six-month time  
9 frame" beginning in April 2011 and stretching to October 2011, GC Br. At 3, the period of  
10 overpayment was limited to May 30, 2011, to September 11, 2011; it was three incidents over  
11 approximately three months. Moreover, the employees' expectations here were that holiday pay  
12 would be prorated, which was the established practice Respondent unequivocally said it would  
13 continue. Thus, the very circumstances that Counsel for the General Counsel would deem  
14 "irrelevant" (GC Br. At 4) cannot be ignored if, as Counsel for the General Counsel apparently  
15 asserts, the "established practices" should be considered.

16 **2. An Order Requiring Respondent to Produce Certain Information to the Union is**  
17 **Inappropriate**

18 Respondent did not except to the ALJ's conclusion that it was required to provide the  
19 Union certain information.<sup>5</sup> Regardless of whether it accepts the ALJ's conclusion,<sup>6</sup> Respondent  
20 is no longer the unit employees' employer, and no longer has a collective-bargaining relationship

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21 <sup>4</sup> Counsel for the General Counsel appears to have inadvertently cited to 360 NLRB No. 104, slip op. at  
18.

22 <sup>5</sup> Accordingly, Respondent does not except to the Recommended Order to the extent it requires  
Respondent to acknowledge that it had a duty to provide the information to the Union when it was the  
unit employees' employer.

23 <sup>6</sup> Respondent takes issue with Counsel for the General Counsel's repetitive, but no less erroneous,  
characterization of Respondent's willingness to move forward towards resolution as "conceding" or  
"admitting" that it "committed numerous violations" of the Act.

1 with the Union. As such, to the extent the recommended Order would require Respondent to  
2 provide the Union with information about its former employees, regarding rules and policies no  
3 longer in effect for the Union-represented employees, the ALJ's recommended Order is  
4 inappropriate and must be corrected.

5 Counsel for the General Counsel agrees that Respondent no longer has a presence at  
6 JBLM as the unit employees' employer, and agrees there is no collective-bargaining relationship  
7 between Respondent and the Union regarding any employees at JBLM or anywhere else.

8 Indeed, as the ALJ summarized:

9 Counsel for the General Counsel further requests that the portion of the complaint  
10 requesting a bargaining order be *withdrawn*. Counsel for the General Counsel's  
11 request to withdraw that the portion of the complaint requesting a bargaining order is  
12 *granted*.

13 ALJD 48:17-19 (emphasis added). Nevertheless, Counsel for the General Counsel inexplicably  
14 argues for an Order that would needlessly require Respondent to produce information that would  
15 only be required in the context of an obligation to bargain, and which can now only be described  
16 as irrelevant in the absence of a collective-bargaining relationship and the attendant obligations.  
17 GC Br. at 7-9.

18 Counsel for the General Counsel's arguments in support of its proposed remedy are so  
19 confused and confusing they border on impenetrable. First, without any explanation, Counsel for  
20 the General Counsel argues that because Respondent has contracts elsewhere it should be  
21 required to provide information to the Union regarding employees that some other employer  
22 employs at a location where Respondent has no presence. GC Br. at 8. Counsel for the General  
23 Counsel then conflates the value of enforcement – in this case through a Notice to Employees of  
Respondent's obligations and willingness to honor its obligations under the Act going forward –  
with a punitive measure of providing information that will be of no use the Union nor will it help

1 any of the employees the Union represents.<sup>7</sup> Thus, Respondent is not attempting to “end run its  
2 obligation under the Act,” as Counsel for the General Counsel disingenuously asserts;  
3 Respondent is merely pointing out the limits of the General Counsel’s authority and the futility  
4 of the proposed Order. Finally, Respondent finds Counsel for the General Counsel’s reliance on  
5 *Shelton Heating and Air Conditioning Co.*, 290 NLRB No. 54, slip op. (1988), troubling. That  
6 case, which does not appear in the Board’s volumes of published cases, was decided by summary  
7 judgment, with no input from the Charged Party. Moreover, the information at issue in that case  
8 dealt with the defunct employer’s relationship to another employer and not, as is the case here,  
9 information related to the rules, policies, wage rates, etc., for the former unit employees. Thus it  
10 would appear that *Shelton Heating* provides have little if any precedential value, generally, or  
11 support for Counsel for the General Counsel’s position, specifically.

12 For these reasons, Respondent respectfully requests that the proposed Order be modified  
13 to remove any directive that Respondent produce information that is no longer necessary by  
14 virtue of the fact that Respondent is no longer the employer, and because Respondent has no  
15 collective-bargaining relationship with the Union.<sup>8</sup>

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18  
19 <sup>7</sup> Counsel for the General Counsel also points to questions regarding subpoena compliance as a basis for  
20 imposing a punitive remedy on Respondent. As the record shows, Respondent ceased operations at  
21 JBLM in late-April 2014, just weeks after the hearing recessed. The delay cited by Counsel for the  
22 General Counsel stemmed from questions regarding compliance with the subpoena that went to several  
thousands of documents. Those documents were unrelated to the information requests at issue, and  
ultimately failed to prove the allegations that Counsel for the General Counsel’s cited as justification for  
their production. In any event, the requested documents were provided and no subpoena enforcement  
action was ever initiated.

23 <sup>8</sup> Respondent acknowledges that, if it were to one day regain the contract to provide transportation  
services at JBLM, and it were to have a collective-bargaining relationship with the Union, it would be  
required to provide the Union with relevant requested information, as dictated by other provisions in the  
proposed Order.

1       **3. An Order Requiring Respondent to Mail Copies of the Notice to Employees Is**  
2       **Appropriate**

3               Counsel for the General Counsel apparently agrees that an electronic posting of the  
4 Notice to employees is not appropriate given that Respondent is no longer their employer, and  
5 that mailing copies to former unit employees is appropriate. Counsel for the General Counsel  
6 nevertheless would have Respondent mail copies of the Notice to the current employer and  
7 “request that Notices be posted in prominent places in the current employer’s facility for 60  
8 consecutive days.”

9               Respondent does not object to Counsel for the General Counsel’s argument in principle,  
10 it merely seeks to avoid unnecessary compliance issues and ensure that the Notice get to the  
11 former unit employees. If the current employer fails or refuses to post the Notice, will  
12 Respondent bear responsibility for failing to lodge a more persuasive request? Will Respondent  
13 be required to monitor the posting even though it is not the employer and neither controls nor has  
14 access to the facility? If the Notice is defaced or removed early, must Respondent secure  
15 replacement Notices and resubmit the request that they be posted for any additional time?

16               In addition to compliance issues, it is unclear whether a posting in the facility will even  
17 reach former unit employees. It may be that the successor employer’s hiring practices, or regular  
18 turnover among the employees has resulted in few if any for unit employees working there. As  
19 such, a posting might have little or no impact on the employees who Counsel for the General  
20 Counsel would want the Notice to reach.

21               Rather than prolong a case that has gone on too long, Respondent merely suggests that a  
22 mailed Notice to Employees will adequately convey the resolution. As such, Respondent  
23 respectfully requests that the recommended Order be modified to require only a mailing of the  
Notice to Employees.

1       **4. Conclusion**

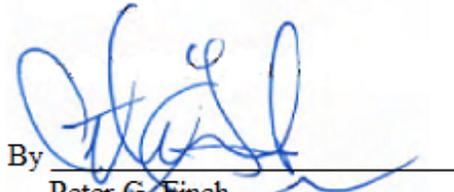
2           As logic, common sense, and the record show, and as Counsel for the General Counsel  
3 agrees, SRI set the initial terms and conditions of employment for unit employees. The  
4 unequivocal terms communicated to employees included that holiday pay would be prorated  
5 based on the hours worked prior to the holiday. SRI did not “change” its formula for calculating  
6 holiday pay to provide eight (8) hours of holiday pay for all employees and then “change” it back  
7 to proration. The overpayments to employees were erroneous; SRI merely discovered the  
8 mistake and quickly corrected it after just three discrete incidents. Regardless of whether SRI  
9 had a duty to notify the Union of the mistake, there is no evidence of an unlawful unilateral  
10 change to the formula for calculating holiday pay. The ALJ’s erroneous conclusion to the  
11 contrary should be reversed.

12           Likewise, Counsel for the General Counsel agrees that SRI does not employ and,  
13 therefore, has no obligation to recognize and bargain with the Union regarding any employees.  
14 Regardless of whether SRI had a duty to provide information to the Union when it did employ  
15 the Union-represented employees, the requested information is no longer relevant, and an order  
16 requiring SRI to produce the information is inappropriate, as there is no bargaining relationship.  
17 With regard to the recommended Notice to Employees, SRI stands ready to mail the appropriate  
18 Notice to all former bargaining unit employees, and respectfully submits that such a mailing is  
19 likely the most effective way to communicate to the affected employees. An electronic posting  
20 of the Notice is no longer appropriate, and an order requiring Respondent to ask another  
21 employer at JBLM invites unnecessary compliance issues. In these circumstances, SRI  
22 respectfully requests that the proposed order be conformed to clarify the posting and production  
23 requirements, consistent with Respondent’s exceptions.

1 Dated at Seattle, Washington, this 22<sup>nd</sup> Day of April, 2015.

2 Respectfully submitted,

3 Davis Wright Tremaine LLP  
4 Attorneys for Strategic Resources, Inc.

5   
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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On this date I caused to be served in the manner noted below a copy of the document to which this is attached (Respondent's Reply to Counsel for the General Counsel's Answering Brief), on the following:

E-file:

Gary Shinnery, Executive Secretary BY: U.S. MAIL  
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DATED this 22nd day of April, 2015.

  
Victoria White