

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

**WEAVEXX, LLC**

Case No. 15-CA-119783

Respondent,

**and**

**TEAMSTERS LOCAL UNION 984,**

Charging Party.

**EXCEPTIONS OF WEAVEXX, LLC**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the Respondent, Weavexx, LLC (“Weavexx”), makes the following exceptions to the August 6, 2015 decision of Administrative Law Judge William N. Cates.<sup>1</sup>

A. STATEMENT OF THE CASE

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<sup>1</sup> Weavexx abbreviates references to the August 6, 2015 decision (the administrative law judge’s decision or “ALJD”) as [ALJD page:line]. Weavexx abbreviates references to our accompanying Brief in Support of Exceptions as “Weavexx Brief.” All citations to the brief are to the “Argument” section.

1. Weavexx excepts to the finding that the Union elected to take the change in pay day to arbitration. [ALJD 1:11]. The grievance taken to arbitration by the Union was filed by unit employee Mitchell Jones and makes no reference to the change in paydays. [GC Exh 5].

#### B. FINDINGS OF FACT

2. Weavexx excepts to the ALJD's legal conclusion that Weavexx violated the Act. [ALJD 2:14-15]. See Weavexx Brief at Part I.E.
3. Weavexx excepts to the finding that the parties admitted or stipulated that Jennifer Lanier was a supervisor. [ALJD 4:fn. 10]. Weavexx specifically denied Ms. Lanier's supervisory status in its Amended Answer and Affirmative Defenses. [See GC Exh. 16].
4. Weavexx excepts to the finding that on November 13, 2013, unit employee Mitchell Jones filed a grievance protesting the change in pay days. [ALJD 4:29-30]. Mitchell Jones filed his grievance on November 18, 2015. [GC Exh. 16, at ¶20]. The grievance makes no mention of the change in pay days. [GC Exh. 5].

#### C. DISCUSSION, LEGAL ANALYSIS AND CONCLUSIONS

5. Weavexx excepts to the finding that Weavexx did not give prior notice of the changes to the Union. [ALJD 5:40]. Plant Manager Ross Johnstone orally notified Union President Terry Lovan of the change in a telephone conversation on October 22, 2013 and he and Human Resource Specialist Jennifer Lanier met with Lovan and other Union representatives on November

- 6, 2013 to discuss the changes. The changes did not take effect until January 10, 2014. [GC Exh. 11,35:15-18; GC Exh. 16, at ¶¶9-11].
6. Weavexx excepts to the ALJD's legal conclusion that the Union was entitled to the opportunity to bargain regarding the changes prior to their implementation. [ALJD 6:15-16]. See Weavexx Brief at Part I.E.
  7. Weavexx excepts to the ALJD's legal conclusion that it violated Section 8(a)(5) and (1). [ALJD 6;22-24] See Weavexx Brief at Part I.E.
  8. Weavexx excepts to the ALJD's failure to ascertain whether the opinion was susceptible to another interpretation consistent with the Act. [ALJD 8:36-10:2]. See Weavexx Brief at Part I.B.
  9. Weavexx excepts to the ALJD's failure to consider the arbitrator's entire opinion. [ALJD 8:22-10:2]. See Weavexx Brief at Part I.C.
  10. Weavexx excepts to the ALJD's legal conclusion that the arbitrator did not base his decision on contractual provisions but rather on extra-contractual considerations. [ALJD 8:36-37] See Weavexx Brief at Part I.C.
  11. Weavexx excepts to the ALJD's legal conclusion that the arbitrator's decision is not susceptible to an interpretation consistent with the Act. [ALJD 8:40-41]. See Weavexx Brief at Parts I.C.; I. E.
  12. Weavexx excepts to the finding that the arbitrator did not discuss and/or address whether, or how, any provisions of the management-rights clause authorized the Company to take the action it did. [ALJD 8:41-44]. See Weavexx Brief at Part I.C.

13. Weavexx excepts to the ALJD's implied legal conclusion that the arbitrator needed to address whether the contract contained a clear and unmistakable waiver of the Union's right to bargain to warrant deferral. [ALJD 8:41-9:2]. Weavexx Brief at Part I.E.
14. Weavexx excepts to the implication that its defense was not reasonably based on an interpretation of the collective-bargaining agreement. [ALJD 9:4-7]. See Weavexx Brief at Part I.C.
15. Weavexx excepts to the legal conclusion that *Oak Cliff-Golman Co.*, 202 NLRB 614-617 (1973) applies to the facts of the instant case. [ALJD 9:4-7]. See Weavexx Brief at Part I.C.
16. Weavexx excepts to the finding that the arbitrator did not look to any particular language in the management-rights clause that might support the Company's position. [ALJD 9:7-9] See Weavexx Brief at Part I.C.
17. Weavexx excepts to the implication that the arbitrator ruled that Section 58 of the collective bargaining agreement limited the Union's position. [ALJD 9:7-9]. See Weavexx Brief at Part I.C.
18. Weavexx excepts to the implication that the arbitrator's conclusion that the absence of any contractual language regarding pay cycles allowed the Company to make an "institutional change" suggests that such conclusion rested upon extra-contractual considerations. [ALJD 9:12-14] See Weavexx Brief at Part I.C.

19. Weavexx excepts to the ALJD legal conclusion that this case is distinguishable from *Smurfit-Stone Container Corp.*, 344 NLRB 658 (2005). [ALJD 9:27-33]. See Weavexx Brief at Part I.D.
20. Weavexx excepts to the ALJD's legal conclusion that the arbitrator's consideration of whether the changes were "excessive or unnecessary" was extra-contractual. [ALJD 9:35-37]. See Weavexx Brief at Part I.C.
21. Weavexx excepts to the ALJD's legal conclusion that the arbitrator's presumption that the change was to improve efficiency evidenced that the arbitrator relied upon extra-contractual considerations or rights. [ALJD 9:38-41]. See Weavexx Brief at Part I.C.
22. Weavexx excepts to the ALJD's legal conclusion that the arbitrator's consideration of whether the pay changes negatively affected unit employees' compensation or benefits evidenced reliance on improper extra-contractual factors. [ALJD 9:41-44] See Weavexx Brief at Part I.C.
23. Weavexx excepts to the ALJD's legal conclusion that the arbitrator's decision is repugnant to the Act. [ALJD 10:1-2]. See Weavexx Brief at Part I.D.; I.E.
24. Weavexx excepts to the ALJD's legal conclusion that the opinion is palpably wrong. [ALJD 9:33]. See Weavexx Brief at Part I.E.
25. Weavexx excepts to the ALJD's legal conclusion that the arbitrator's determination that the change in the payroll period from weekly to biweekly was a 'managerial decision' that allowed the Company to make "an institutional change" and was a proper use of 'managerial discretion'

evidences that he relied upon extra-contractual considerations or rights.

[ALJD 8:37-39]. See Weavexx Brief at Parts I.C.; II.A.

26. Weavexx excepts to the finding that the arbitrator found, without explanation, a managerial right not contained in the CBA. [ALJD 9:2-4]. See Weavexx Brief at Parts I.C.; II.A.
27. Weavexx excepts to the ALJD's legal conclusion that the arbitrator's usage of the term "managerial discretion" evidenced that he relied upon extra-contractual considerations or rights. [ALJD 9:24]. See Weavexx Brief at Parts I.C.; II.A.
28. Weavexx excepts to the ALJD's failure to find that Weavexx used the term "managerial discretion" to describe the reserved rights provision of the CBA's management-rights clause in its brief to the arbitrator. [ALJD 8:36-41]. See Weavexx Brief at Parts I.C.; II.A.
29. Weavexx excepts to the finding that *Columbian Chemicals Co.*, 307 NLRB 592 (1992), enfd. mem. 993 F.2d 1536 (4<sup>th</sup> Cir. 1992) is controlling. [ALJD 9:23]. See Weavexx Brief at Part II.A.
30. Weavexx excepts to the ALJD's implied legal conclusion that consideration of extra-contractual evidence bars deferral to an arbitration decision. [ALJD 8:36-37]. See Weavexx Brief at Part II.B.
31. Weavexx excepts to the ALJD's legal conclusion that the Government affirmatively demonstrated that the standards for deferral had not been met. [ALJD 8:22-23]. See Weavexx Brief at Parts I.C.-I.E; III.A.

32. Weavexx excepts to the ALJD's failure to find that the contractual issues related to the change in pay periods were identical to those related to the change in paydays. [ALJD 8:25-34]. See Weavexx Brief at Part III.A.
33. Weavexx excepts to the ALJD's failure to find that the arbitrator's conclusions regarding the change in pay periods apply equally to the change in pay days. [ALJD 8:25-34]: See Weavexx Brief at Part III.A.
34. Weavexx excepts to the ALJD's failure to find that the Union filed the instant charge on December 30, 2013 alleging that Weavexx violated Sections 8(a)(5) and (1) by unilaterally changing the pay periods and paydays but only presented the change in pay periods to the arbitrator. [ALJD 8:25-34]. See Weavexx Brief at Part III.A.
35. Weavexx excepts to the ALJD's legal conclusion that the charge should not be deferred because one of the two unfair labor practices was not considered by the arbitrator. [ALJD 8:25-26] See Weavexx Brief at Part III.A.
36. Weavexx excepts to the ALJD's legal conclusion that the Board will not defer when the statutory issue is not presented to the arbitrator. [ALJD 8:33]. See Weavexx Brief at Part III.A.
37. Weavexx excepts to the ALJD's legal conclusion that *Professional Porter & Window Cleaning Co.*, 263 NLRB 136 (1982), enfd. 742 F.2d 1438 (2<sup>nd</sup> Cir. 1983) applies to the instant case. [ALJD 8:34] See Weavexx Brief at Part III.A.

#### D. CONCLUSIONS OF LAW

38. Weavexx excepts to the finding that Weavexx failed to provide the Union with notice of the changes to the unit employees' pay periods or paydays. [ALJD 10:23-25] Plant Manager Ross Johnstone orally notified Union President Terry Lovan of the change in a telephone conversation on October 22, 2013 and he and Human Resource Specialist Jennifer Lanier met with Lovan and other Union representatives on November 6, 2013 to discuss the changes. The changes did not take effect until January 10, 2014. [GC Exh. 11,35:15-18; GC Exh. 16, at ¶¶9-11].
39. Weavexx excepts to the ALJD's legal conclusion that it violated Sections 8(a)(5) and (1) of the Act by failing to provide the Union with bargaining concerning changes to the unit employees pay cycle or paydays. [ALJD 10:23-25]. Weavexx cannot be found to have violated the Act because the opinion warranted deferral. See Weavexx Brief at Parts I.C – I.E.; III.A.

Respectfully submitted,

/s/ Barry J. Rubenstein  
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September 3, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 3<sup>rd</sup> day of September, 2015 served a copy of these  
Exceptions of Weavexx, LLC by electronic mail service upon the following:

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