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12 International Brotherhood of Boilermakers, Iron Shipbuilders,
13 Blacksmiths, Forgers and Helpers, Local Union 104, AFL-CIO;
14 Portland Metal Trades Council;
15 Metal Trades Department, AFL-CIO; and
16 Pacific Coast Metal Trades District Council

17 UNITED STATES OF AMERICA
18 NATIONAL LABOR RELATIONS BOARD
19 REGION 19

20 VIGOR INDUSTRIAL, LLC,

Case No. 19-CA-135538

21 Employer,

22 and

**BRIEF IN SUPPORT OF CROSS-
EXCEPTIONS**

23 INTERNATIONAL BROTHERHOOD OF
24 BOILERMAKERS, IRON SHIPBUILDERS,
25 BLACKSMITHS, FORGERS AND HELPERS
26 LOCAL UNION 104, AFL-CIO; PORTLAND
27 METAL TRADES COUNCIL; METAL
28 TRADES DEPARTMENT, AFL-CIO; and
PACIFIC COAST METAL TRADES
DISTRICT COUNCIL,

Charging Parties.

1 The Charging Party joins fully in the Brief In Support of Exceptions filed by Counsel for
2 General Counsel. Charging Party adopts that Brief in Support of its Cross-Exceptions.

3 Fundamentally, the Charging Party was presented with a *fait accompli* when the Employer
4 implemented its companywide no-smoking policy. Vigor Industrial has many facilities in
5 addition to one involving this dispute. When the no-smoking policy was announced, it was clear
6 it was a companywide policy, that it was being implemented as a company policy and that there
7 would be no bargaining over the policy. The lead time was announced only to give employees a
8 chance to end their smoking in conformance with a policy. The announcement was however
9 clear that the policy would be implemented and that a final decision had been made.

10 The Administrative Law Judge ignores the nature of the implementation and the context in
11 which it was implemented because she failed to find that the Employer's announcement was *fait*
12 *accompli* in violation of the Act. She found that the employer announced the policy on February
13 27. That is the date that it was announced as a decision. The fact that the employer had
14 suggested, in earlier comments, it was moving in that direction (ALJD p 8-9) only underscores
15 that the February 27 announcement was firm and final. Again, we incorporate all the Exceptions
16 and arguments in support of the Exceptions filed by the General Counsel.

17 The remedy in this case should include the following:

- 18 a. Notice posting period for the period of time between when the violation occurred
19 and when the notice is posted. Any shorter posting period only encourages Respondents to delay.
- 20 b. The Board's decision should be provided to all employees so they can read it and
21 understand the notice posting and the unfair labor practice of the employer.
- 22 c. Employees should be provided adequate time during work time to read the Board's
23 decision and the Board's notice.
- 24 d. The Board's notice should be read to employees by Board agents, along with
25 Union representatives, outside the presence of management. Employees should be furthermore
26 allowed to ask questions of the Board agent and the Union representative outside the presence of
27 management to explain the Board's decision.

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1 e. The Board's decision along with a remedial notice should be mailed to all
2 employees who have been employed at any time from when the violation occurred to when the
3 Board's decision and notice are posted.

4 f. The Board's notice should be clarified to require that the name of the signing
5 official be actually put on the Board's notice and that the Board's notice be signed with a
6 signature which is clearly and legible so employees can know who actually signed it.

7 g. The Board's notice should delete the words "choose to refrain" since refraining
8 has nothing to do with this case.

9 For the reasons suggested in this brief and the brief of the General Counsel the Exceptions
10 of the General Counsel should be granted and these Cross-Exceptions should be granted. The
11 remedies requested by the Charging Party should be furthermore granted.

12 Respectfully submitted,

13 Dated: October 13, 2015

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

14
15 By: /s/ DAVID A. ROSENFELD
16 DAVID A. ROSENFELD

17 Attorneys for Charging Parties

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1 **CERTIFICATE OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed
3 in the County of Alameda, State of California, in the office of a member of the bar of this Court,
4 at whose direction the service was made. I am over the age of eighteen years and not a party to
5 the within action.

6 On October 13, 2015, I served the following documents in the manner described below:

7 **BRIEF IN SUPPORT OF CROSS-EXCEPTIONS**

- 8 (BY U.S. MAIL) I am personally and readily familiar with the business practice of
9 Weinberg, Roger & Rosenfeld for collection and processing of correspondence for
10 mailing with the United States Parcel Service, and I caused such envelope(s) with
11 postage thereon fully prepaid to be placed in the United States Postal Service at
Alameda, California.
- 12 (BY FACSIMILE) I am personally and readily familiar with the business practice of
13 Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be
14 transmitted by facsimile and I caused such document(s) on this date to be transmitted by
15 facsimile to the offices of addressee(s) at the numbers listed below.
- 16 (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy
17 through Weinberg, Roger & Rosenfeld’s electronic mail system to the email addresses
18 set forth below.

17 On the following part(ies) in this action:

18 Mr. Ronald K. Hooks
19 Regional Director
20 National Labor Relations Board, Region 19
21 2948 Jackson Federal Building
22 915 Second Avenue
23 Seattle, WA 98174-1078
24 Ronald.hooks@nlrb.gov

Ms. Jacqueline M. Damm
Bullard Law
200 SW Market St., Suite 1900
Portland, OR 97201
jdamm@bullardlaw.com

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct.

24 Executed on October 13, 2015, at Alameda, California.

25
26 /s/ Rhonda Fortier-Bourne
Rhonda Fortier-Bourne

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