

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

U.S. Foods, Inc.

and

Case 27-CA-158614

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 483

**COUNSELS FOR THE GENERAL COUNSEL'S BRIEF TO THE
ADMINISTRATIVE LAW JUDGE**

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I. Preliminary Statement

The Complaint in Case 27-CA-158614, based on charges¹ filed by the International Brotherhood of Teamsters, Local 483 (Union or Local 483), alleges that U.S. Foods, Inc. (Respondent), violated Sections 8(a)(1) and 8(a)(3) and 8(a)(5) of the National Labor Relations Act (Act). Specifically, the Complaint alleges that, in June 2015, during the time after the Union filed a petition to represent certain of Respondent's employees and before a scheduled Board election, Respondent's agent threatened employees by telling them that their wages would be reduced if they selected the Union as their collective bargaining representative. The Complaint was amended at the hearing to allege that, during the same time period, Respondent's agent threatened employees with the loss of their vacation time if they selected the Union as their collective bargaining representative.

The Complaint further alleges that on August 1, 2015, following the Board election in which the majority of Respondent's unrepresented employees cast ballots to select the Union as their collective bargaining representative, and following the subsequent certification of the Union as the employees' collective bargaining representative, Respondent reduced the wage rates and the paid vacation time balances and paid sick time balances of all those employees who voted in the Board election.

On February 2, 2016, a hearing was conducted in Boise, Idaho with the Honorable Amita Baman Tracy, presiding. At hearing, Counsel for the General Counsel (General Counsel) respectfully requested an expedited decision because General

¹ The initial charge in this proceeding was filed by the Union on August 24, 2015. The first amended charge was filed by the Union on October 9, 2015. The second amended charge was filed by the Union on November 5, 2015. The third amended charge was filed by the Union on December 7, 2015.

Counsel was seeking authority to pursue injunctive relief under Section 10(j) of the Act. General Counsel has not been authorized to seek injunctive relief.

II. Facts

U.S. Foods, Inc. is a national food distribution company that serves customers who operate institutional kitchens, such as hospitals, hotels, schools, independent restaurants, chain restaurants, cruise ships, and military bases. Respondent has sixty “broad line locations” throughout the country, including one in Salt Lake City (Tr. 154-155)² These locations, also referred to as “distribution centers”, receive food and food-related products directly from vendors and store those products in a freezer section, a cooler section, and a dry section. After customers place orders, Respondent’s warehouse employees select the products, build pallets, and load trucks for delivery. Respondent’s delivery drivers then deliver the products to customers throughout the area (Tr. 155). The distribution center in Salt Lake City operates a resident yard in Boise, Idaho, which employs delivery drivers who are domiciled at that location (Tr. 156). Respondent’s Salt Lake City-based employees are not represented by a collective bargaining representative, but Respondent’s Boise drivers are (Tr. 23, 156)³

In 2007, Local 483 started representing the Boise drivers, taking over for Teamsters Local 162 (Tr. 22-23, Jt. 3). At the time that Local 483 took over representing the Boise drivers, there was in effect a 2006 Memorandum of Agreement (2006 MOA) between Local 162 and Respondent that specified that any Boise driver

² “GC Ex.’ references the exhibits of the Counsel for the General Counsel. “Jt. Ex.’ references the joint exhibits of the General Counsel and Respondent. “Tr.’ references, with the appropriate page numbers, are to the transcript of the proceeding before the Administrative Law Judge.

³ Out of Respondent’s sixty distribution centers, the employees at twenty-four of them are represented by a union, in either a wall-to-wall unit, which includes the warehouse employees and drivers together, or in units of just warehouse employees or in units of just delivery drivers (Tr. 156).

hired after September 30, 2011 would not be part of the bargaining unit (Tr. 23, Jt. 2, p. 3⁴). In 2008, four Teamster Locals, including Local 58, Local 117, Local 162, and Local 483 entered into a collective bargaining agreement with Respondent that was in effect until 2013 and that maintained in effect the 2006 MOA specifying that Boise drivers hired after September 2011 were not included in the bargaining unit (Tr. 24-25, Jt. 4). In 2013, essentially the same Teamsters Locals, including Local 483, entered into a collective bargaining agreement with Respondent that is currently in effect until 2017 (Tr. 25-26, Jt. 5). Although the 2006 MOA was no longer explicitly referenced in the collective bargaining agreement, Respondent “continued to recognize the Union as the exclusive-collective bargaining representative for the domicile delivery drivers at the Boise yard who were organized as of September 11, 2007, excluding any domicile drivers hired after September 30, 2011” (Jt. 1, p. 3).

On May 26, 2015, Local 483 filed a petition with the Board, seeking to represent the Boise drivers who had been hired since September 30, 2011 (Tr. 26-27, Jt. 6). At the time the Union filed the petition, Respondent employed approximately eight delivery drivers, including three or four delivery drivers who were already represented by the Union and five delivery drivers who Respondent hired after September 2011 and were, therefore, not represented by the Union (Tr. 26, Jt. 6, Jt. 8).

Respondent and the Union entered into a stipulated election agreement for an *Amour-Globe* election⁵ and scheduled an election for June 16, 2015 (Tr. 28, Jt. 8)⁶

⁴ The last sentence of paragraph 9 reads: “However, new workers hired after September 30, 2011, will not be part of the bargaining unit unless through the processes of the National Labor Relations Act, a new bargaining unit is created.” (Jt. 2, p.3)

⁵ The parties agreed that “If a majority of ballots are cast for [Union], they will be taken to have indicated the employees’ desire to be included in the existing multi-state delivery driver bargaining unit currently represented by [Union]” (Jt. 8, p.2)

At the time the Union filed the petition, all of the Boise delivery drivers worked out of the same resident yard, had the same job duties and responsibilities, shared the same supervisors, wore the same uniform, and delivered the same product (Tr. 50, 96-97, 126-127, 160-161)⁷

At the time the Union filed the petition, the unrepresented Boise drivers earned 80 hours of paid vacation time each year (Tr. 57, 100, 129). The paid vacation days did not roll over to the next year. If the drivers did not use all of their paid vacation days, they would be paid for those days at the end of each year (Tr. 57, 100). At the time the Union filed the petition, the unrepresented Boise drivers earned 40 hours of paid sick leave each year (Tr. 58, 100, 129). The paid sick leave days also did not roll over to the next year, however, if the drivers did not use all of their paid sick leave days in the year, Respondent took those paid sick leave days and credited them towards any paid vacation leave days a driver had used. If the driver then had remaining paid vacation leave days at the end of the year, the driver would be paid for those days. The unrepresented Boise drivers were also granted three paid personal days each year. If the unrepresented Boise drivers did not use their personal days, they were paid for those days at the end of each year (Tr. 58-59, 101). The number of paid vacation leave days that the represented Boise drivers received, as set forth in the current collective

⁶ The Union's petition initially listed "all drivers" as the proposed unit and listed the number of drivers as eight (Jt. 6). When the parties entered into the Stipulated Election Agreement, they also agreed to a *Norris-Thermador* eligibility list and specified that Lucas Toomey, Daniel Koepl, Rosendo Contreras, Kenneth Mann, and Cody Eisenbrandt would be the only employees eligible to vote in the Board election (Jt. 8). These were the five drivers hired after September 30, 2011.

⁷ There were some minor differences in working conditions. Some of the unrepresented Boise drivers had different routes than the represented Boise drivers, routes that required both traveling farther and delivering a larger quantity of products (Tr. 51-52). This was primarily because the unrepresented Boise delivery drivers were also, by definition, the least senior drivers (Tr. 84-85). Additionally, the unrepresented Boise drivers did not receive premium pay for working shifts that began between 3:00 p.m. and 10:00 p.m. or for working shifts that began between 10:00 p.m. and 4:00 a.m. (Tr. 53-55, 98), while the represented Boise drivers did receive premium pay for those shifts (Jt. 5, p. 10). The meal allowance for shifts that required the unrepresented Boise drivers to stay away from home overnight was \$25 per night (Tr. 56, 99, 127), as opposed to the \$30 per night that represented drivers received (Jt. 5, p. 13).

bargaining agreement, was considerably fewer for new employees; however, the number of paid sick leave days that new employees received was greater (Jt. 5, p. 14, 16).

Either shortly before or shortly after the Union filed the petition on May 26, 2015⁸, Respondent conducted three employee meetings with its unrepresented Boise drivers (Tr. 59, 102). The first meeting was held at the Tilted Kilt restaurant in Boise and three of the unrepresented Boise drivers attended that meeting (Tr. 60, 102-104). The meeting was conducted by Brad Forney, Respondent's Vice President Operation, Daryk Butler, Respondent's Manager Transportation, and Gary Anderson, Respondent's Area Supervisor (Tr. 60, 103-104, GC Ex. 1(o)). At that meeting, Forney told the unrepresented Boise drivers that he had heard that they were interested in unionizing and he asked them what their work-related concerns were (Tr. 60-61). Forney asked if there was anything Respondent had done wrong (Tr. 104). Each of the drivers took turns responding, and talked about issues such as perceived union favoritism for route assignments, how to become a route driver from a relief driver, questions about medical benefits, and how to have more Saturdays off to be with family (Tr. 61-62, 104-105). One driver told the managers that he was upset that he and another unrepresented Boise driver had not been able to attend Respondent's company picnic and the annual "truck rodeo" because the Union drivers did not want to cover the unrepresented Boise drivers' shifts so they could take the time off to attend. Forney told the drivers that in

⁸ Witnesses were uncertain of the exact date of the first meeting. A Union agent testified at hearing that he contacted a Respondent agent on May 20, 2015, to seek voluntary recognition for the sought-after unrepresented Boise drivers. When the Union agent did not hear back from Respondent, he filed the petition (Tr. 27-28). Thus, Respondent had knowledge of the Union's intent on May 20, 2015 and could have conducted the first meeting any time after that date.

the future that was something that Respondent could fix by having drivers from the Salt Lake City distribution center cover the shifts (Tr. 62).

Forney warned the unrepresented Boise drivers that they would not be under the same contract as the currently represented Boise drivers and that they could potentially make less money than they were making at this time (Tr. 61)⁹ Forney asked the drivers for time to “fix” the issues and to give him six months to do so. Forney asked the drivers to postpone the election so that he had time to address their concerns (Tr. 62). Forney also warned the drivers that he and the other managers would no longer be able to socialize with the drivers and take them out to lunch if they voted to have the Union represent them (Tr. 106).

Forney told the drivers that all the employees who attended Respondent’s 2015 truck rodeo had received hoodies (also described as burgundy sweaters or pullovers) and he asked the drivers if they would be interested in receiving those hoodies, even though they hadn’t been able to attend (Tr. 62). Forney asked the drivers if they needed or wanted anything in the way of uniforms (Tr. 62, 105). The drivers told him that they liked the polo shirts and the hoodies that were distributed at Respondent’s truck rodeo (Tr. 63, 105-106). Although the polo shirts were “sort of” part of the regular work uniform, the Boise drivers only received one polo shirt when they were first hired (Tr. 64, 108-109). They received several button up shirts and were notified that if they ever needed more button-up shirts, they could just ask. However, the polo shirts and a

⁹ Specifically, General Counsel’s witness testified “And then Kenny had mentioned that he was interested in the benefits plan and the monetary increase. And [Forney] said ‘Well, that’s understandable. If you guys did decide that you wanted to go union, that you would not be under the same contract.’ And he said that it was his obligation to the company to make sure that we weren’t on the same contract, we’d be in a separate contract, and that we wouldn’t make the same money, we might even make less because it wouldn’t be based on Oregon’s pay. It would be based on Salt Lake’s pay, and so we could potentially make less money than we’re making now if that’s the way negotiations went.”

special hat with LED light bulbs are examples of items that were harder for Respondent's employees to obtain (Tr. 64-65)¹⁰ A few days after Respondent's first meeting, Forney sent each of the drivers several polo shirts and a hoodie from the 2015 truck rodeo (Tr. 63-66, 108).

Respondent held a second meeting at the Courtyard Marriott in Boise approximately a week after the first (Tr. 67, 110). This meeting was attended by the same three Boise drivers and the same three Respondent representatives who attended the first meeting, along with Matt Reynolds, Respondent's Vice President or General Manager of the Salt Lake City Distribution Center, and Doreen Long, Respondent's Director of Employee Relations (Tr. 68-69, 110-111, 154). At this meeting, Reynolds told the Boise drivers that he had heard that they wanted to be represented by a union and he told them that he felt that this was a reflection of failure on his part. He also asked what the Boise drivers' concerns were and what problems he could fix (Tr. 70). Forney told the drivers that this meeting was being conducted to compare Respondent's benefits to the Union's benefits and that, after the meeting, he would show each driver what their wages would be if they selected the Union as their bargaining representative (Tr. 72, 111-112). Long then showed the drivers a PowerPoint presentation on the differences between Respondent's benefits and Union benefits (Tr. 71, 112). Finally, Long told the drivers that there would also be differences in pay and if they wanted to know what their pay could potentially be reduced to, then they should meet with Forney (Tr. 71). At the end of the meeting, Forney showed each Boise driver a small notebook that had written in it the numbers of what each driver's

¹⁰ When he received his one polo shirt at his new-employee orientation, one Boise driver asked if he could have more polo shirts, but was told that it was a "one time thing." (Tr. 110)

wage rate would be if he selected the Union as his bargaining representative (Tr. 72-73, 112-113). Forney showed Employee Lucas Toomey the number of hours he had worked and pointed to the number \$17.55 and told Toomey that this is what he would be making if he decided to go union (Tr. 72-73). Forney showed Employee Kenneth Mann the numbers \$17 15 and \$19.60 and pointed to \$17 15 and told Mann that was the wage rate he would be paid if the Union was his bargaining representative (Tr. 113).

Respondent held a third meeting approximately one week before June 16, 2015, which was the date that the Board election had initially been scheduled (Tr. 76, 113, 131-132). This meeting was held at the Springhill Suites in Boise and attended by the same three unrepresented Boise drivers, plus one other unrepresented Boise driver, Dan Koepl. This meeting was conducted by Brad Forney, Gary Anderson, Doreen Long, and Steve Boyak, the Human Resources Manager out of Utah (Tr. 77, 113, 130-132). At this meeting, Long showed a video depicting various union protests and strikes and Forney told the drivers that, during previous union strikes, the Union "played dirty." (Tr. 114, 116-117, 131-132). At the end of this meeting, Forney told Koepl that he wanted to meet with him individually because Koepl had missed the first two meetings (Tr. 132-133).

The following day, Respondent's representatives Forney, Anderson, Daryk and Reynolds met with Koepl while he was on his route (Tr. 133). Forney talked with Koepl while the other managers performed Koepl's job duties by delivering products to customers on his route (Tr. 133). Forney warned Koepl that if he voted for the Union as his bargaining representative, his wages would be reduced to \$14.00 per hour. Forney also warned Koepl that his paid vacation time would be reduced if he voted for

the Union as his bargaining representative. Forney told Koepl that the weeklong vacation he had just taken with his wife would be the only one he would take that year, depending on how the vote went (Tr. 134).

For the unrepresented Boise drivers, Respondent's three group meetings were the first time that the drivers met some of the higher-level managers and the first time they met with multiple supervisors and managers at a restaurant and the first time any supervisors or managers had ever treated them to lunch (Tr. 69, 77-78, 107-108, 131-132).

On June 23, 2015¹¹, the Board conducted an election for the unrepresented Boise drivers (Tr. 28-29, 59, 102, 130, Jt. Ex. 11). Four Boise drivers cast ballots¹² and the majority of them voted to have the Union represent them in collective bargaining (Tr. 29, Jt. Ex. 11). On July 2, 2015, the Acting Regional Director of Region 27 issued to all parties the Certification of Representative, along with an attachment entitled "Notice of Bargaining Obligation" (Jt. Ex. 12)¹³

On approximately July 16, 2015, Bob Blyth, Respondent's Vice President of Labor Relations, telephoned the Union's now retired Secretary-Treasurer, Mark Briggs, and left a voicemail stating that the two needed to get together to "find a date to transition the employees over to the health and welfare plan" (Tr. 30). In his voicemail, Blyth did not say anything with regards to the newly-represented Boise drivers' wages, vacation leave or sick leave. Blyth sent Briggs a follow-up letter dated the same date, confirming their upcoming discussion about transitioning the newly-represented drivers

¹¹ The record establishes that the election was initially scheduled for June 16, 2015 and that, due to circumstances not in any of the parties' control, the election was rescheduled for June 23, 2015 (Jt. 1, p. 4-5, Jt.9).

¹² The fifth driver on the *Norris-Thermador* list was not employed at the time of the election and did not vote (Jt. 11).

¹³ The Acting Regional Director issued a Corrected Certification of Representative, with an attachment, on September 16, 2015 (Jt. Ex. 13). The corrections are not substantive and not at issue in this proceeding.

into the existing collective bargaining agreement between the parties to avoid a gap in benefit coverage. The letter did not contain any reference to wages, vacation leave, or sick leave (Tr. 29-30, Jt. 14).

Sometime between July 24 and July 26, 2015, Briggs and Blyth spoke on the telephone about the newly represented Boise drivers' transitioning from Respondent's Health and Welfare Plan to the Oregon Teamsters Health and Welfare Plan¹⁴. The two agreed on a transition date of August 1, 2015. During this telephone call, Blyth and Briggs did not discuss the newly represented Boise drivers' wages, vacation benefits, or sick benefits (Tr. 31-32).

On July 28, 2015, Blyth sent Briggs a follow-up letter regarding this conversation (Tr. 32, Jt. 15). The letter reads in pertinent part: "Pay and benefit changes will be effective on 08/01/15" (Jt. 15). Upon receiving this letter, Briggs telephoned Blyth and left a voicemail stating that the Union expected the newly-represented employees to be "red-circled in" on their wages. At hearing, Briggs explained that red circle refers to keeping the employees' wages the same until the hours they had worked caught up with the wage rate in the collective bargaining agreement. That same date Briggs called the Union's new Secretary-Treasurer and asked him to write a letter to Respondent setting forth the Union's position on the red circle. The Union's Secretary-Treasurer sent Blyth a letter dated July 30, 2015 (Tr. 33-34, Jt. 16). This letter reads in pertinent part:

The current wage for these employees cannot be changed without further negotiations. We are concerned that US Foods may be making these wage changes in retaliation against employees who joined the Union. Please be advised, there is no negotiated wage-rate change for these employees. Should

¹⁴ Pursuant to the collective bargaining agreement that is currently in effect between Respondent and the Union, all bargaining unit members in Local 483 are covered by the Oregon Teamsters Employers Trust (Jt. Ex. 5). All the previously unrepresented Boise drivers were covered by Respondent's health and welfare plan (Tr. 31, Jt. 14)

US Foods unilaterally implement this change prior to a negotiated agreement; the appropriate NLRB charges will be filed (Jt. 16).

By letter dated July 31, 2015, Blythe reiterated in writing Respondent's intent to apply the existing collective bargaining agreement, including the hourly wage rate progression, to the newly-represented Boise drivers. In his letter, Blythe denies that changing the newly-represented Boise drivers' wage rates constituted a unilateral change or an issue subject to negotiation (Jt. 17)¹⁵

On August 1, 2015, Respondent drastically reduced each of the newly-represented Boise drivers' wage rates (Tr. 80, 117, 136). By letter dated August 7, 2015, Respondent's Finance Supervisor confirmed that the wage rates for each of the newly-represented Boise drivers had been reduced¹⁶. Respondent did not testify as to how it calculated the new wage rates, but it is clear that the wage rates for all of the newly-represented Boise drivers decreased significantly immediately following their selection of the Union as their bargaining representative.

Lucas Toomey, one of the newly-represented Boise drivers, started working for Respondent on December 16, 2013, at the rate of \$18.00 per hour. He received several wage increases during his employment and, at the time of the Union election, he made \$21.89 per hour. On August 1, 2015, Respondent reduced his wage rate to \$19.60 per hour (Tr. 56-57, 80). In addition, Toomey had difficulty using his paid sick

¹⁵ Blyth's July 31, 2015 letter to the Union reads in pertinent part: "Given this language [the language from the Stipulated Election Agreement], as well as the certification of the election results showing that the employees wished to be included in the existing bargaining unit, we are simply respecting the employees' wishes and complying with what is required of us under CBA and the National Labor Relations Act." (Jt. Ex. 17) At hearing, Blyth testified generally that he had applied the existing collective bargaining agreement based on advice from counsel (Tr. 184-185).

¹⁶ In addition, Respondent's Answer to the Complaint admits that it "reduced the wage rates and vacation and sick leave balances of Unit employees who voted in the Board election" and Respondent's September 18, 2015 Statement of Position to Region 27 admits that the four newly represented Boise drivers were covered by the existing collective bargaining agreement starting on August 1, 2015 (GC Ex. 1(o), GC Ex. 2)

leave time (Tr. 81-82). He used two weeks of paid vacation time, from June 28, 2015, to July 13, 2015, but Respondent later calculated Toomey as using one week of paid vacation time and one week of paid sick leave time. In November 2015, Respondent notified Toomey that he had no remaining sick leave time. Ultimately, this dispute was resolved and Respondent credited Toomey for his correct vacation and sick leave and paid him for the leave that remained at the end of the year (Tr. 81-83).

Another newly-represented Boise driver, Kenneth Mann, started working for Respondent, on January 27, 2014, at the rate of \$18.00 per hour. He received Respondent's standard wage increase every three months and by January 2015, he was also earning \$21.89 per hour (Tr. 95, 99). After the Boise drivers voted to be represented by the Union, Respondent reduced his wages to \$17.15 per hour, which was the exact figure that Forney had shown him at the meeting held before the election. In addition, at the end of 2015, Respondent did not pay Mann for his remaining leave days (Tr. 117-119).

A third newly-represented Boise driver, Dan Koepl, started working for Respondent on November 9, 2014, at the rate of \$19.00 per hour. He received Respondent's standard wage increase after three months of employment and another increase after six months of employment (Tr. 122, 128). He was scheduled to receive a third wage increase in August 2015 and another on his one year anniversary in November 2015 (Tr. 128-129). After the Boise drivers voted to be represented by the Union, Respondent reduced Koepl's wages to \$14.70 per hour. Koepl did not receive the wage increase that he was scheduled to receive on his nine-month anniversary or on his one year anniversary (Tr. 136-137). Pursuant to the collective bargaining

agreement between Respondent and the Union, Koepl would have been entitled to a wage increase in mid-September 2015, when he crossed the 2081 hour wage-rate threshold set forth in the contract, but he did not receive this wage increase either (Tr. 137, Jt. 5, p. 12). Further, in October 2015, Koepl attempted to use his second week of paid vacation time (Tr. 137). Respondent notified him that “due to the changeover”, Koepl did not have any vacation left. Similarly, in November 2015, Koepl attempted to use his remaining paid sick leave, but was notified that he did not have any remaining paid sick leave (Tr. 137-138). According to the collective bargaining agreement, Koepl, as a “new hire”, should have received and had available several more paid sick leave days (Jt. 5, p. 16)¹⁷

III. Issues Presented¹⁸

The issues to be resolved are whether Respondent, through its agents: (1) violated Section 8(a)(1) of the Act by threatening its employees with a reduction in wages and a loss of paid vacation time if they selected the Union as their collective bargaining representative; (2) violated Section 8(a)(5) of the Act by, in fact, unilaterally reducing employees’ wages, paid vacation time and paid sick time; and (3) violated Section 8(a)(3) of the Act by reducing employees’ wages, paid vacation time and paid sick time in retaliation for the Boise drivers selecting the Union for their bargaining representative.

¹⁷ The fourth newly-represented Boise driver, Rosendo Contreras, had his wages reduced to \$17.15 per hour (Jt. 18).

¹⁸ The facts of this case are not at issue.

IV. Argument

A. Respondent Violated Section 8(a)(1) of the Act by Threatening its Employees

Respondent violated the Act when Vice President Operations Brad Forney threatened its employees. The Complaint alleges that Forney threatened Respondent's employees that their wages would be reduced if they selected the Union as their bargaining representative. At hearing, General Counsel amended the Complaint to allege that Forney also threatened Respondent's employees with the loss of vacation time if they selected the Union as their bargaining representative. The evidence establishes that Forney, on different occasions, both orally and in writing, communicated to its unrepresented Boise drivers what their wages would be if they voted for the Union. Specifically, the undisputed testimony¹⁹ of each Boise driver was that, at the first group meeting Respondent conducted, Forney told the Boise drivers that, if they voted for the Union, they would not make the same wages and they might even make less. At the second group meeting Respondent conducted, Forney showed each Boise driver figures written in a notebook that reflected that their wages would be

¹⁹ General Counsel respectfully requests that all of General Counsel's witnesses be fully credited in their testimony. Respondent did not present Vice President Operations Forney to testify, nor did Respondent offer an explanation of why Forney did not testify. "Where relevant evidence which would properly be part of a case is within the control of the party whose interest it would normally be to provide it, and he fails to do so without satisfactory explanation, the [trier of fact] may draw an inference that such evidence would have been unfavorable to him." 29 Am. Jur.2d §178. An administrative law judge has the discretion to draw an adverse inference based on a party's failure to call a witness who may reasonably be assumed to be favorably disposed to the party and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent and thus within its authority or control. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006); see also *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15, 15 fn. 1 (1977); *Underwriters Laboratories Inc. v. NLRB*, 147 F.3d 1048, 1054 (9th Cir. 1998). In the event that the witness is not called, drawing an adverse inference regarding any factual question on which the witness is likely to have knowledge is appropriate. *International Automated Machines*, 285 NLRB 1122, 1123 (1987), *enfd. mem.* 861 F.2d 720 (6th Cir. 1988). Accordingly, Respondent's unexplained failure to call Forney should lead to an adverse inference that his testimony would not have been favorable to the Respondent on matters to which General Counsel's witnesses testified.

lower²⁰ Further, Employee Koeppl's undisputed testimony was that Forney told Koeppl that, depending on how this [Union] vote goes, the vacation Koeppl had just taken would be the only one Koeppl would receive this year. At the time, Koeppl had only used part of his vacation and had several days of paid vacation remaining to be used, which he was ultimately denied.

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act. An employer violates the Act by threatening employees with a decrease in wages if they vote to be represented by a union. *UNF, West., Inc.* 363 NLRB No. 96 (Jan. 20, 2016). In this case the Board wrote:

The Board has long held that an employer may not tell employees that the consequences of unionization may result in a cut in wages. *President Riverboat Casinos of Missouri, Inc.*, 329 NLRB 77, 77 (1999). Such a pronouncement is an implied threat because the statement, without reference to the bargaining process, suggests that wages might be reduced as a result of a vote for unionization.

See also *Abramson, LLC*, 345 NLRB 171, 174 (2005)(holding unlawful employer's threat of loss of benefits and threat that the company would probably close its doors if the employees voted in favor of union representation); *Schaumburg Hyundai Inc.*, 318 NLRB 449, 450 (1995)(holding unlawful the employer's threat to reduce wages); *Economy Foods*, 294 NLRB 660, 665 (1989)(holding that employer's threat to reduce wages and benefits if the employees persisted in their pro-union activity was a clear violation of Section 8(a)(1) of the Act); *Security Search & Abstract Co.*, 290 NLRB 908, 923-24 (1988)(holding unlawful a threat to reduce wages in the event of unionization);

²⁰ Although Respondent's counsel elicited testimony regarding how an employees' wage rate also depended on the number of hours each employee worked, General Counsel contends, and the evidence establishes, that Forney told the unrepresented Boise drivers that their wage rate would be reduced if they voted for the Union.

International Harvester Co., 222 NLRB 377 (1976)(finding unlawful employer's threat of loss of healthcare benefits, sick pay and vacation).

The undisputed facts in this case are that Respondent threatened its employees that they would be paid lower wages and would receive fewer days of paid vacation time if they voted for the Union. By doing so, Respondent violated Section 8(a)(1) of the Act.

B. Respondent Violated Section 8(a)(5) of the Act by Making Unilateral Changes

Respondent violated the Act by making unilateral changes to the newly-represented Boise drivers' terms and conditions of employment. The facts show that, on May 26, 2015, the Union filed a petition to conduct an *Amour-Globe*²¹ election for Respondent's Boise drivers who were not currently represented by the Union. At the time the petition was filed, the approximately three represented Boise drivers and the approximately five unrepresented Boise drivers shared many of the same terms and conditions of employment, including working together out of the same yard and performing the same job duties. As such, they appropriately constituted a single bargaining unit²². The facts further show that, on June 23, 2105, the majority of the

²¹ In *Globe Machine and Stamping Co.*, 3 N.L.R.B. 294 (1937), the Board set forth a voting procedure that allows employees "to determine the scope of a unit by allowing them to cast a vote for each of several potential units which the Board has determined are appropriate." *NLRB v. Lorimar Productions, Inc.*, 771 F.2d 1294, 1301 (9th Cir.1985). The *Globe* self-determination doctrine was extended in *Armour and Company*, 40 N.L.R.B. 1333 (1942), where the Board found that each of the three separate bargaining units could be added to an historical unit if the employees so desired and elections were directed among employees in those three craft units only. Thus, well-settled Board law holds that an *Amour-Globe* election permits employees sharing a community of interests with an already-represented unit of employees to vote whether to join that unit.

²² Respondent may try to argue that the petition itself was not sufficiently clear or that the bargaining unit sought was not appropriate. Both arguments are without merit. Any perceived deficiencies in the petition were resolved in the Stipulated Election Agreement. Moreover, as the evidence shows, the Boise drivers hired before September 2011 and the Boise drivers hired after September 2011 share a strong community of interest.

unrepresented Boise drivers voted to have the Union as their collective bargaining representative. Under the definition of an *Amour-Globe* election, this meant that the unrepresented Boise drivers voted to join the already-existing bargaining unit of Boise drivers. Finally, the facts establish that on August 1, 2015, shortly after the newly-certified bargaining unit was certified, Respondent changed the terms and conditions of employment of the previously unrepresented Boise drivers by substantially reducing their wage rates by between \$2.29 and \$5.74 per hour and by reducing their paid vacation leave time and their paid sick leave time. Although the changes affected each unrepresented Boise driver differently, there is no dispute that Respondent made these unilateral changes and there is no dispute that the changes were significant.

Respondent's actions violate the Act.

The seminal case in this matter is *Federal–Mogul Corporation*, 209 NLRB 343 (1974). In this case, 140 non-unionized setup men, who were specifically excluded from the collective bargaining agreement between the company and its 2,000 unionized machine workers, voted to join the union. Following the vote, the company unilaterally applied the terms of the collective bargaining agreement to the setup men. The Board held that, in so doing, the company had committed an unfair labor practice. The Board stated that it did “not perceive either logical or practical justification for permitting either party to escape its normal bargaining obligation upon the theory that this newly added group must somehow be automatically bound to terms of a contract which, by its very terms, excluded them.” *Id.* at 344.

Board law has not changed since *Federal Mogul* and it has been upheld by courts. In *NLRB v. Mississippi Power & Light Co.*, 769 F.2d 276, 280 (5th Cir. 1985),

the court held that in regulating fringe-group elections where there is an existing bargaining agreement, the NLRB rulings protect the employer if a fringe group selects a bargaining representative during the term of an existing bargaining agreement. “The newly added employees may *not* invoke coverage by the existing agreement; rather, they must bargain the terms of a completely new agreement.” See *Wells Fargo Armored Service Corp.*, 300 NLRB 1104 (1990)(holding new union members do not come automatically under terms of CBA covering old union members); *Bay Medical Center, Inc.*, 239 NLRB 731 (1978)(holding that where the corporate owner of two hospitals had been obligated to negotiate with nurses from two hospitals as individual units, the unrepresented nurses from one hospital could not be deemed to come automatically under the terms of the existing CBA covering the represented nurses at the second hospital when the former chose to join the latter in a single bargaining unit)²³

The facts in this case are almost identical to the facts in *Federal-Mogul*. Before the Board election the unrepresented Boise drivers were explicitly excluded from being represented by the Union by the 2006 MOA. The unrepresented Boise drivers voted to join the already-represented Boise drivers so that they would also have the Union as their bargaining representative. However, that does not mean that the newly-certified Boise drivers are automatically covered by the existing collective bargaining agreement between Respondent and the Union. Rather, the Union and Respondent must bargain over the terms and conditions under which the “fringe group”, which are the newly

²³ See also generally *NLRB v. Henry Vogt Machinery Co.*, 718 F.2d 802, 809 (6th Cir. 1983)(employer permitted laboratory employees who had voted to join existing unit to retain cafeteria privilege during bargaining over whether that privilege should be retained now that they were in unit of others who did not enjoy it); *Borden, Inc. v. N.L.R.B.*, 19 F.3d 502, 509-10 (10th Cir. 1994).

represented drivers, will work until the contract in the larger unit expires. The “status quo” from which they bargain is the current working conditions of the newly-represented Boise drivers. *Federal-Mogul*, 209 NLRB at 344²⁴ As such, any argument Respondent may make that it applied the terms and conditions of the existing collective bargaining agreement to the newly-certified drivers for lawful reasons is wholly without merit.

It is anticipated that Respondent may also argue that it applied the terms and conditions of the collective bargaining agreement to the newly-certified under the mistaken belief, perhaps on the advice of legal counsel, that it was required to do so under Board law. This argument is not only baseless, but it is also disingenuous, and must be rejected. First, the *Amour-Globe* language in the Stipulated Election Agreement, on which Respondent may rely, only states that if the majority of ballots are cast for the Union in the Board election, that will mean that the employees desire to be included in the existing multi-state delivery driver bargaining unit currently represented by the Union. Nowhere does it state that the employees will then be automatically covered by the existing collective bargaining agreement.

Second, and more conclusively, the “Notice of Bargaining Obligation” issued as the attachment to both Certifications of Representative could not set forth any more clearly Respondent’s obligations, which reads, in pertinent part, “ .the employer’s legal

²⁴ Respondent’s anticipated attempt to distinguish *Federal-Mogul* on its facts should be rejected. Respondent may argue that the unionized machinists in *Federal-Mogul* constituted a separate and distinct group from the non-unionized set-up men whereas the two groups of employees in the instant matter are both drivers. Respondent may further argue that the non-unionized set-up men in *Federal-Mogul* had unique terms and conditions of employment not covered by the union contract which necessitated the need to bargain for new terms and conditions, allegedly unlike the situation in the instant matter. Respondent’s arguments that the two cases are distinguishable because of different job classifications and slightly different fact patterns are simply wrong. Just as in *Federal-Mogul*, the Boise drivers had one group of employees subject to the collective bargaining agreement and another distinct group of employees who were specifically excluded from the collective bargaining agreement and who had their own terms and conditions of employment, which now necessitates the need to bargain with the Union for new terms and conditions of employment.

obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election. ” and “ if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act. ” Respondent received the “Notice of Bargaining Obligation” well before August 1, 2015. Third, the Union’s July 30, 2015 letter to Respondent reiterates Respondent’s obligation to bargain and the Union warns Respondent that it may pursue NLRB charges if Respondent made its unilateral changes. Respondent’s claim regarding its mistaken belief is without merit²⁵

Finally, even assuming that Respondent still believed its conduct was lawful, despite the concrete evidence to the contrary, this mistake belief does not absolve Respondent. In *Freeman Decorating Co.*, 335 NLRB 103, 122 (2001), the Board held that “Even good-faith reliance on advice of counsel is no defense to an unfair labor practice charge.” See also *Jerstedt Lumber Co.*, 209 NLRB 662 (1974)(holding that “The principle that lacking unlawful intent or relying in good faith on the advice of counsel is no defense to an unfair labor practice charge is so well settled as not to require extensive citation.”); *NLRB v. Hendel Manufacturing Company*, 483 F.2d 350, 353 (2d Cir. 1973)²⁶

²⁵ Moreover, in the group meetings held before the Union election, Respondent’s representative Forney correctly told the drivers that they would not be under the Union contract and that it was his obligation to make sure that they would be covered by a separate contract.

²⁶ Respondent may also argue that, in late July 2015, the Union agreed that the existing collective bargaining agreement would apply to four newly-certified Boise drivers. While it is a fact that Respondent and the Union agreed

The numerous agreements between Respondent and the Union specifically agreed that drivers hired after September, 2011 would be required to go through NLRB processes to be represented. This is exactly what these drivers did. The Boise drivers are now represented by the Union. However, under the very well-settled Board law, the parties must bargain the terms and conditions of employment for the newly-represented Boise drivers. By unilaterally reducing the newly-represented Boise drivers' wages and paid vacation time and paid sick time, Respondent violated Section 8(a)(5) of the Act.

C. Respondent Violated Section 8(a)(3) of the Act

General Counsel has established that Respondent violated Section 8(a)(5) of the Act by unilaterally changing the terms and conditions of employment of the newly-represented Boise drivers. By making these changes, Respondent also violated Section 8(a)(3) of the Act. The question of whether the Respondent unlawfully reduced the wages of the Boise drivers and reduced their paid vacation leave and paid sick leave in retaliation for engaging in protected concerted activity is governed by *Wright Line*, 251 NLRB 1083 (1980), *enforced on other grounds*, 662 F.2d 899 (1st Cir.1981), cert denied 453 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Under this test, General Counsel must prove by a preponderance of the evidence that employees' protected conduct was a motivating

that the newly-represented Boise drivers would be "transitioned" from Respondent's health and welfare plan to the Union's health and welfare plan, two Union agents made it clear, in both voice message and letter, that the Boise drivers wages must remain what they were until the parties could bargain and that the wage rate for the newly-represented Boise drivers could not be changed without negotiations. The record establishes that there was no "meeting of the minds": that the Union believed the agreement between the parties was regarding the health and welfare plan only and that once Respondent referenced changing the newly-represented drivers' wages rates and benefits, the Union immediately and unequivocally sought to correct this. Should Respondent attempt to claim that there was an agreement between the parties, this claim must be rejected.

factor in the listed adverse employment actions. This burden is met by showing (a) that the employees were engaged in protected activity, (b) that the employer had knowledge of that activity, and (c) that the employer had animus toward such activity. *Verizon and its subsidiary, Telesector Resources*, 350 NLRB 542 (2007)(holding that the elements of discriminatory motivation are union activity, employer knowledge, and employer animus); *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991). If the General Counsel establishes a prima facie case, the employer then must either rebut the General Counsel's evidence or prove, pursuant to the affirmative defense delineated in *Wright Line*²⁷

In this case, the first two prongs of the *Wright Line* test are easily proved. There is no dispute that the unrepresented Boise drivers were engaged in protected activity, which was voting in a Union election, and there is no dispute that Respondent was aware of this activity. The third prong is also easily proved, as Respondent's animus towards the Boise drivers' union activity is amply demonstrated in the record. General Counsel has established that Respondent's agents unlawfully threatened the Boise drivers during the time between when the Union filed the petition and when the Boise drivers voted in the election. Specifically, Forney unlawfully threatened the Boise drivers with a reduction of wages and with the loss of paid vacation time. General Counsel contends that Respondent also unlawfully solicited grievances and unlawfully granted benefits to the unrepresented Boise drivers. Although these two violations were not alleged in the Complaint or at hearing, General Counsel's witnesses testified,

²⁷ To establish this affirmative defense "an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have been taken even in the absence of the protected activity." *Wright Line, L.B. & B. Associates, Inc.*, 346 NLRB 1025, 1026 (2006).

without contradiction, that both Forney and Reynolds asked them in group meetings what problems Respondent could fix and to allow Respondent time, by postponing the Board election, to fix any of their work-related concerns or problems. General Counsel's witnesses also testified, without contradiction, that after one group meeting Respondent sent them all special gifts of numerous polo shirts that employees normally only received at new employee orientation and the hoodies that were only distributed to employees who attended the truck rodeo, which none of the Boise drivers did. The solicitation of grievances and granting of benefits further demonstrate Respondent's animus towards the Boise drivers' union activity²⁸

It is anticipated that Respondent will attempt to meet its burden under *Wright Line* by arguing that it applied the collective bargaining agreement to the newly represented Boise drivers because it was legally required to do so and not because it was retaliating against the Boise drivers. General Counsel contends that this assertion constitutes a pretextual explanation for its actions. This pretextual explanation establishes that Respondent violated Section 8(a)(3) of the Act, because Respondent's perceived obligation has been proved to be demonstrably false and Respondent was aware of this falsity before it changed the newly-represented Boise drivers' terms and conditions of employment²⁹ "A pretextual explanation of the employer's action will support an inference of discriminatory motivation." *Kentucky River Medical Center*, 355

²⁸ See *Atelier Condominium and Cooper Square Realty*, 361 NLRB No. 111, fn 29 (2014), in which the ALJ credited witness testimony of additional 8(a)(1) violations as evidence of animus in the alleged 8(a)(3) violations. *American Packaging Corp.*, 311 NLRB NLRB 483 fn 1 (1993) (holding that the "law is well-settled that conduct that exhibits animus but that is not independently alleged to violate the Act may be used to shed light on the motive for, or underlying character of, other conduct that is alleged to violate the Act"); *Meritor Automotive*, 328 NLRB 813 (1999).

²⁹ There is evidence that Respondent did not, in fact, apply the terms of its collective bargaining agreement to the newly-represented Boise drivers. Employee Koepl testified that he did not receive a wage rate increase once he had reached the wage-rate threshold, as set forth in the collective bargaining agreement, and Koepl testified that he did not receive the full number of paid sick leave days he should have, as set forth in the collective bargaining agreement. This constitutes further evidence of pretext.

NLRB No. 129, slip op. at 3-4 (2010); *All Pro Vending*, 350 NLRB 503, 508 (2007); *Rood Trucking Co.*, 342 NLRB 895, 897-898 (2004), citing *Laro Maintenance Corp. v. NLRB*, 56 F.3d 224, 230 (D.C. Cir. 1995) (“When the employer presents a legitimate basis for its actions which the factfinder concludes is pretextual the factfinder may not only properly infer that there is some other motive, but that the motive is one that the employer desires to conceal--an unlawful motive.”) (internal quotation omitted). General Counsel contends that the prima facie case of discrimination is bolstered by the Respondent's unsupported and unbelievable claim that it was legally required to apply the currently collective bargaining agreement to reduce the wages and benefits of the newly-represented Boise drivers.

Moreover, establishing animus is unnecessary. The Board, with court approval, has found conduct similar to Respondent's by an employer to be inherently destructive of employee rights. *United Aircraft Corp.*, 199 NLRB 658, 662 (1972). In *United Aircraft*, the employer violated Sections 8(a)(1) and (5) by withholding a scheduled three percent wage increase in order to improve its bargaining position in the upcoming negotiations with the union. The employer contended that there was no proof that its decision to withhold the increase was unlawfully motivated and the Board held and the court upheld that none was needed. In granting enforcement of the Board's order, the Court of Appeals wrote:

“ Therefore, the Board's conclusion that sections 8(a)(1) and (5) were violated was clearly correct. With regard to sections 8(a)(1) and (3), it is difficult to imagine discriminatory employer conduct more likely to discourage the exercise by employees of their rights to engage in concerted activities than the refusal to put a scheduled wage increase into effect because the employees, four days before, selected a union as bargaining representative. Thus, the Board was amply justified in concluding that the Company's conduct in this case was “inherently destructive' of important employee rights' and violative of sections

8(a)(1) and (3) without specific proof of anti-union motivation. “ *NLRB v. United Aircraft Corp.*, 490 F.2d 1105, 1109-10 (2d Cir. 1973).

See also *Eastern Maine Medical Center*, 253 NLRB 224, 241-243

(1980)(holding that the withholding of an annual wage increase from bargaining unit employees because of the fact that the employer was in negotiations with union over wages is both inherently destructive and specifically found to be unlawfully motivated), *enfd.* 658 F.2d 1 (1st Cir. 1981); *Harowe Servo Controls, Inc.*, 250 NLRB 958, 959, 1035-1036 (1980) (holding that the suspension of wage increases, defended by employer on grounds that union must bargain over wages, constituted unlawful employer reprisal against employees for voting for union representation, based both on an independent finding that the conduct was inherently destructive of employee rights and based on specific evidence that the suspension of wage increases was motivated by an effort to punish employees for choosing union representation); *KDEN Broadcasting Co.*, 225 NLRB 25, 26 (1976)(holding that the withholding of wage increases that would have been given in absence of a vote for union violated Sec. 8(a)(3)).

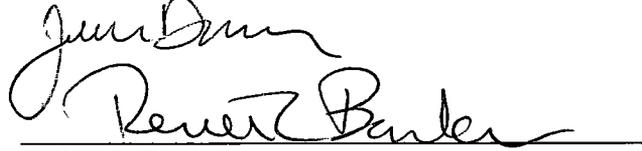
In this case, General Counsel has established that Respondent’s conduct was discriminatory under *Wright Line* and that Respondent’s conduct was inherently destructive of employee rights. Respondent’s conduct violated Section 8(a)(3) of the Act.

V. Conclusion

The record evidence and the relevant legal precedent establishes that Respondent violated Sections 8(a)(1) and 8(a)(3) and 8(a)(5) of the Act, as alleged. Specifically, the record evidence establishes that, immediately after the Union filed a petition to represent certain Boise drivers, Respondent threatened those drivers with the reduction of wages and loss of paid vacation time and that Respondent also solicited grievances from the drivers and granted benefits to those drivers. The evidence further establishes that, following the Union election, Respondent followed through on its threats to reduce wage rates and benefits, in violation of the Act. General Counsels urge the ALJ to make appropriate findings of fact, conclusions of law, and such recommendations to the Board as will properly and fully remedy each of Respondent's unfair labor practices. In order to fully remedy the unfair labor practices set forth above, General Counsels respectfully request the ALJ to include in her order a requirement that all discriminatees be made whole, including the reasonable consequential damages incurred as a result of Respondent's unlawful conduct.

DATED AT Denver, Colorado, this 8th day of March 2016.

Respectfully submitted,

Handwritten signatures of Julia M. Durkin and Renée C. Barker. The signature of Julia M. Durkin is written above the signature of Renée C. Barker. A horizontal line is drawn across the bottom of the signatures.

Julia M. Durkin

Renée C. Barker

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VI. Proposed Notice to Employees

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten you with a reduction in wages if you choose to be represented by a union.

WE WILL not threaten you with the loss of vacation time if you choose to be represented by a union.

WE WILL NOT reduce your wages, vacation benefits, or sick leave balances, because you voted to be included in the existing bargaining unit represented by International Brotherhood of Teamsters, Local 483 (Union).

WE WILL NOT make changes to your wages, hours and working conditions without providing the Union with notice and an opportunity to bargain, and without either reaching agreement or a valid impasse.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL, upon request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the group of drivers who voted in the June 23, 2015 NLRB-conducted election to be included in the existing bargaining unit already represented by the Union.

WE WILL, upon request, rescind changes to bargaining unit employees' wages, vacation benefits, and sick leave balances that took effect August 1, 2015 when we unilaterally applied the terms of the collective-bargaining agreement covering the existing bargaining unit already represented by the Union to those employees who voted to join the bargaining unit in the June 23, 2015 NLRB-conducted election.

WE WILL make employees Daniel Koepl, Lucas Toomey, Rosendo Contreras, and Kenneth Mann whole for any losses, including reasonable consequential damages, that occurred when we reduced their wage rates, vacation benefits and sick leave balances, without bargaining with the Union, plus interest on those losses.

WE WILL compensate employees Daniel Koepl, Lucas Toomey, Rosendo Contreras, and Kenneth Mann for the adverse tax consequences, if any, of receiving a lump-sum award and **WE WILL** file a report with the Social Security Administration allocating the award to the appropriate calendar quarters.

U.S. Foods, Inc.

(Employer)

Dated: _____

By: _____

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.

Byron Rogers Federal Office Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

Telephone: (303)844-3551
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **Counsels for the General Counsel's Brief to the Administrative Law Judge**, together with this Certificate of Service, was E-Filed or E-mailed or mailed Regular Mail, as indicated below, to the following parties on **March 8, 2016**.

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