

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TEN, SUBREGION ELEVEN

JOHNSON CONTROLS, INC.

Employer

Case 10-CA-151843

and

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, AFL-CIO, AND ITS AFFILIATED
LOCAL UNION NO. 3066

Charging Party

and

BRENDA LYNCH and ANNA MARIE GRANT

Intervenors

**CHARGING PARTY INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-
CIO, AND ITS AFFILIATED LOCAL UNION NO. 3066'S RESPONSE TO LIMITED
CROSS-EXCEPTIONS AND SUPPORTING BRIEF OF THE RESPONDENT**

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I. INTRODUCTION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (“Board”), 29 C.F.R. § 102.46, ON April 12, 2016, Respondent Johnson Controls, Inc. (“Employer”) filed limited cross exceptions to the February 16, 2016 Decision and Order (“Decision”) of Administrative Law Judge Keltner W. Locke (“ALJ” or “Judge Locke”) in the above-referenced case. Charging Party International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its affiliated Local Union No. 3066 (collectively, “UAW” or “Union”) submits the following brief in response to the Employer’s exceptions. For the reasons outlined in its own exceptions, brief in support, and reply brief, the Union respectfully requests that the Board sustain the Union’s exceptions and overrule the ALJ’s finding that “Respondent lawfully withdrew recognition because the Union no longer enjoyed majority support.” ALJ Decision at 1. For the reasons outlines below, the Union respectfully requests that the Board reject the Employer’s exceptions.

II. STATEMENT OF THE CASE

The Union represents a unit of approximately 160 production and maintenance employees at the Employer’s plant in Florence, South Carolina. The parties’ most recent collective bargaining agreement was in effect from May 7, 2012 until May 7, 2015. On April 20, 2015, the parties began negotiating a successor agreement. Tr. at 35.¹

On April 22, 2015, by letter dated April 21, 2015, Johnson Controls informed the Union that it had received a petition (“Petition”) “signed by a majority of employees” indicating that the employees “no longer desire to be represented by the UAW.” Tr. at 35; GC Exh. 2. In that same

¹ References to the transcript will be cited herein as “Tr. at ___.” References to General Counsel and Employer exhibits will be cited herein as “GC Exh. ___” and “ER Exh. ___,” respectively.

letter, Johnson Controls stated its intention to withdraw recognition from the Union upon the May 7, 2015 expiration of the parties' collective bargaining agreement and informed the Union that all previously-scheduled bargaining dates were cancelled. GC Exh. 2. In response, the Union wrote to the Employer stating that it had not received any verifiable evidence that it had lost majority support, and, therefore, demanded to continue negotiations. GC Exh. 3. The Employer, however, refused. GC Exh. 4.

Thereafter, in order to prove that it had not, in fact, lost majority support, the Union solicited authorization cards ("Cards") from bargaining unit employees. Tr. at 46. Such Cards were collected between April 27, 2015 and May 7, 2015. Tr. at 47. In total, the Union obtained 69 signed Cards. Tr. at 48.

On May 6, 2015, UAW International Representative Dave Bortz ("International Representative Bortz") sent a letter via e-mail to the Employer stating his belief that the Union had not lost majority support and offering to compare the Union's evidence with the Employer's. GC Exh. 6. The Employer refused (GC Exh. 7) and the Union filed the unfair labor practice charge which led to the instant proceeding. GC Exh. 1(a).

The Board issued its Complaint and Notice of Hearing on August 31, 2015, (GC Exh. 1(c)), and a hearing on this matter was held on November 16, 17, and 18, 2015, and January 13 and 19, 2016. At the hearing, the Employer introduced its Petition, which contained 83 signatures.² ER Exh. 1. The General Counsel, however, presented evidence that seven individuals who signed the Petition subsequently – but before the Employer withdrew

² The Employer also introduced evidence that eleven bargaining unit employees had allegedly made anti-Union statements to their supervisors before the withdrawal of recognition. However, the ALJ did not consider this evidence in reaching his decision. ALJ Decision at 15, note 5.

recognition – signed Cards. GC Exhs. 8-14. Therefore, the General Counsel argued that those employees’ signatures could not be used to support the Employer’s withdrawal of recognition. Nevertheless, Judge Locke found that (1) four of those who signed Cards after signing the Petition subsequently changed their minds and, therefore, no longer supported the Union on the date recognition was withdrawn, and (2) employee Martha Rogers, one of those who had previously signed the Petition, did not sign her Card until May 8, 2015. ALJ Decision at 15. Therefore, Judge Locke held that “the disaffection petition constitutes proof that, at the time Respondent withdrew recognition, 82 of the 160 bargaining unit employees opposed representation by the Union,” and, therefore, that “Respondent lawfully withdrew recognition.” ALJ Decision at 15. In reaching this decision, the ALJ also noted, inter alia, that (1) Levitz Furniture Co. of the Pacific, which provides the governing standard in this proceeding, contains both objective and subjective requirements (ALJ Decision at 11); (2) the Union should have provided its Cards to the Employer before it withdrew recognition (ALJ Decision at 12-13); and (3) the Petition initially contained 84 valid signatures. ALJ Decision at 15.

The General Counsel and the Union each filed exceptions to which the Employer and Intervening Parties have responded. The Employer now files limited Cross-Exceptions to which the Union now responds.

III. THE EMPLOYER’S LIMITED CROSS-EXCEPTIONS

1. Should the ALJ have considered the authorization cards presented as evidence by the General Counsel sufficient to show that employees who had signed them had revoked their prior support for a disaffection petition? (Employer Exception 1).
2. Should the ALJ have determined that employees who did not sign the disaffection petition are presumed to support the Union? (Employer Exception 2).
3. Should the ALJ have expressly enumerated the employees who may have supported the disaffection petition, but did not sign it, and count those employee towards the total of

employee who supported the petition for the purpose of determining whether the Employer's withdrawal violated the Act? (Employer Exception 3 and 4).

4. Should the ALJ have considered any evidence regarding the authorization cards presented by the General Counsel? (Employer Exception 1).
5. Should the ALJ have expressly determined that Martha Rogers continued to support the disaffection petition on May 8, 2015? (Employer Exception 6).

IV. ARGUMENT

The arguments below address the Employer's exceptions and demonstrate that the exceptions should be rejected by the Board.

A. The authorization cards are sufficient to revoke support for the disaffection petition.

The Employer argues that the UAW authorization cards which read, "I [NAME] authorize the United Auto Workers to represent me in collective bargaining," are "inherently vague and misleading." Employer Br. at 6. The Employer then argues that ambiguously worded documents are insufficient to ascertain employee intent when majority status is in question. In support of this argument, the Employer relies on three cases: Pic-Way Shoe Mart, 308 NLRB 84 (1992), Laidlaw Waste Systems, 307 NLRB 121 (1992), and Highlands Hospital Corp., 347 NLRB 1404 (2006). Interestingly, all three of these cases follow the same pattern: (1) anti-union forces at a workplace circulate cards or petitions reading some iteration of "I [NAME] support having a decertification election;" (2) the employer uses this petition as a basis for withdrawing recognition; (3) the Board holds (or upholds the ALJ's findings) that the petition unambiguously supports holding an election, but it is ambiguous as to whether the signers want to get rid of the union or merely support having an election; and (4) the employer is held to have violated the act by withdrawing recognition.

The UAW authorization cards are not a request for an election. The intent is clear on its face, “I authorize the United Auto Workers to represent me in collective bargaining.”

The Employer then cites HQM of Bayside, 348 NLRB 758 (2006), Parkwood Development Center, 347 NLRB 975 (2006), and Freemont-Rideout Health Group, 354 NLRB 453 (2009). to support its argument that the UAW cards are not “unequivocal support” for the Union. In this argument, the Employer implores the Board to adopt a stricter rule in cases like this one, which involve disaffection petitions. The Employer advocates for a rule that requires employees, after they have signed a disaffection petition, to both show renewed unequivocal support for the union (the authorization card) AND an additional statement that revokes or disavows his or her signature on the disaffection petition. It is unclear as to why the Employer thinks employees need to go to these lengths to show their intent. Either signing a new card OR disavowing the disaffection signature should be enough, and is enough under current case law.

B. Employee testimony should not be used to determine the intent of the signers of the Cards.

The Employer next argues that, beyond the language of the Cards, employee testimony should be used to show the actual intent of those who signed the Cards subsequent to signing the Petition. This argument is contrary to well-established Board law.

The law is clear: “where [a union authorization card] on its face clearly declares a purpose to designate the union as collective-bargaining representative, **the only basis for denying face value to the authorization card is affirmative proof of misrepresentation or coercion.**” See, e.g., DTR Industries, 311 NLRB 833, 839 (1993) enf. denied on other grounds, 39 F.3d 106 (6th Cir. 1994) (citing Levi Strauss & Co., 172 NLRB 732, 733 (1968)) (emphasis added). Indeed, the Board has stated:

[W]here . . . the purpose of the card is set forth on its face in unambiguous language, **the Board may not, in the absence of misrepresentations, inquire into the subjective motives or understanding of the card signer to determine what the signer intended to do by signing the card.**

Id. at 840 (citing NLRB v. Gissel Packing Co., 395 U.S. 575, 608 (1969)) (emphasis added).

In so holding, the Board was simply following the longstanding edict of the U.S. Supreme Court as outlined in NLRB v. Gissel Packing Co.: “[E]mployees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature.”³ 395 U.S. at 606. See also Jefferson Nat’l Bank, 240 NLRB 1057, 1076-77 (1979) (noting that union authorization cards “will be counted unless it is proved that the employee was told that the card was to be used solely for the purpose of obtaining an election”). Cf. Superior Container, 276 NLRB 521, 522 (1985) (finding that an English authorization card signed by a non-English speaker was invalid, and noting that “whatever facial presumption of validity which might otherwise attach to a signed card if the card itself is unambiguous has been rebutted here by the evidence that [the non-English speaker] was unable to read it because he could not read that language in which it was printed and could not understand it because it was not otherwise explained to him in a language he could understand”).

Notably, in Gissel, the Supreme Court categorically rejected “any rule that requires a probe of an employee’s subjective motivations as involving an endless and unreliable inquiry.” 395 U.S. at 608. In doing so, the Court noted that “employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony

³ Although Union counsel raised the Gissel standard at trial (Tr. at 189), and both Union counsel and the General Counsel raised it in their closing arguments (Tr. at 445-446, 495-496, 517-518, 526), the ALJ failed to even mention – let alone analyze – the case in his decision.

damaging to the union.” Id. See also G.R.D.G., Inc., 323 NLRB 258, 259 (1997) (“[W]e are somewhat skeptical of the testimony of employees who, under examination by the Employer's counsel, are understandably reluctant to admit that they signed union cards.”); Washington Beef Producers, Inc., 264 NLRB 1163, 1184 (1982) (“An otherwise valid card is not to be lightly set aside . . . [w]here an employee has signed a card which plainly designates a union as bargaining agent, the employer can prevail only with clear evidence of misrepresentation. A morass of hazy individual recollections of attendant circumstances will not suffice.” (internal citations and quotations omitted)).

For example, in Guardian Ambulance Service and American Medical Supplies, two employees who had previously signed union authorization cards later testified that they had not read the cards before signing and did not understand that by signing the cards they were authorizing the union to represent them. 228 NLRB 1127, 1129 (1977). Nevertheless, in a decision which was affirmed in full by the Board, the ALJ found that the “single purpose, unambiguous cards, which [the employees] admittedly signed,” were valid for the purpose of determining the union’s majority status. Id. (noting that “[n]either of these employees is blind, unable to read English, nor mentally defective,” and that “both of them knew they were signing a card ‘for the Union’ and that they knew they were thereby indicating their desire for union representation”).

Similarly, in Colonial Lincoln Mercury Sales, Inc., three employees who signed union authorization cards later testified that they signed the cards for reasons other than wanting to join the union. 197 NLRB 54, 66 (1972). One employee testified that he signed the card to “stick together” with his fellow employees, and the other two testified that they thought the cards were solely for the purpose of securing a meeting. Id. Nevertheless, in a decision which was upheld in

full by the Board, the ALJ found that the cards stated their purpose in clear and unambiguous language, that the employees chose to sign the cards, and that the employees were not misled by the individuals who solicited their signatures or by any ambiguities in the cards' language. Id. Therefore, the ALJ found that the cards were "valid designation[s] of the Union." Id.

The Cards in the instant case are unambiguous, single-purpose authorization cards. The top of the card reads "UAW AUTHORIZATION CARD" in bold, underlined letters, and then states "I [NAME] authorize the **United Auto Workers** to represent me in collective bargaining." (GC Exhs. 8-14) (emphasis in original). See also DTR Industries, 311 NLRB at 839 (finding that where the top of each card stated "AUTHORIZATION TO UAW" with smaller type authorizing the UAW to represent the signatory in collective bargaining "the single purpose of the authorization could hardly have been made clearer").

In all five days of hearing, there was not a single allegation that any of those who solicited the signed Cards misrepresented anything, let alone the purpose of the Cards. In fact the opposite is true. The testimony of the very Card signers who, according to the ALJ, later "changed their minds," indicates that those who solicited their signatures either made it clear that the Cards were Union Cards or said nothing at all. For example, Morris McFadden testified that he did not remember who asked him to sign the Card, but that the person said, "Come on, man. Still got a chance to sign . . . up for the Union." (Tr. at 129-130). Harry Lee Jefferson testified that, when Charles Diaz asked him to sign the Card, "[h]e really didn't tell me too much. He was just asking me – talking about sign it, a union card." (Tr. at 69). Both John A. Smith and Johnny Smith testified that those who solicited their signatures simply asked them to sign the Cards without saying anything more. (Tr. at 110 and 147).

The Cards at issue are unambiguous, single-purpose union authorization cards, and there was not one single allegation of misrepresentation. The correct approach is to find that the signatures of those who subsequently signed the valid Cards could not be used to support the Employer's withdrawal of recognition, See, e.g., HQM of Bayside, 348 NLRB 758, 759 (2006) (finding that, in withdrawing recognition, an employer is not entitled to rely on signatures of employees who subsequently demonstrate support for the union), and, therefore, that the Union had not lost majority support at the time recognition was withdrawn.

C. The ALJ should not consider the Employer's proffered subjective oral statements by employees as objective evidence of additional support for the Petition.

The ALJ determined that, since there were 82 signatures on the Petition (constituting a majority of the unit), he need not consider the other evidence that the Employer put forward to support its decision, that is, statements of certain people, who did not sign the Petition, but otherwise orally expressed support for it. ALJD, p. 15, fn 5. The Petition was not a sufficient basis for the Employer to withdraw recognition because the Union had not, in fact, lost majority support at the time of withdrawal. Nevertheless, the ALJ should not consider these statements as they are subjective and unreliable.

In support of its position, the Employer cites NLRB v. Mullican Lumber, 535 F.3d 271 (4th Cir. 2008), MSK Corp, 341 NLRB 43 (2004), A.W. Schlesinger Geriatric Center, 304 NLRB 296 (1991), Wallkill Valley General Hospital, 288 NLRB 103 (1988); Glosser Bros. Inc., 271 NLRB 710 (1984), Sofco, Inc., 268 NLRB 159 (1983), and AMBAC Intl. Ltd., 299 NLRB 505 (1991). In all but two of these cases, employee statements were used to show that the employer had a good faith basis for withdrawing recognition from the union. Another case, MSK, dealt with whether a successor employer must bargain with the Union, or whether it could refuse to,

based on its good faith belief that good faith doubt as to the majority status or the successor unit. Of course, the good faith standard was overruled in Levitz Furniture Co., 333 NLRB 717 (2001). The Board now requires employer to prove, through objective evidence, that the union had, in fact, lost majority status at the time the employer withdraws recognition. Statements, such as the ones used in the good faith analyses of the past, which merely cast doubt on a union's majority status, cannot be relied on by the employer. See Pacific Coast Supply, LLC v. NLRB, 801 F.3d 321, 329 (D.C. Cir. 2015).

The other case that the Employer relies on is NLRB v. Mullican Lumber. In that case, the employer withdrew recognition after receiving a petition with signatures from 114 out of 220 employees, at least four statements from employees to management that they supported decertification, and a few other indicia of union non-support. Mullican Lumber, 535 F.3d at 277-278. The Fourth Circuit denied enforcement of a NLRB order, essentially holding that the Employer lawfully withdrew recognition. Weighing heavily on the Fourth Circuit's decision was the fact that the General Counsel did not object to (hearsay or otherwise) or rebut any of the employers' evidence of disaffection. Id. at 278. Further, because of the lack of objections and rebuttal, the Fourth Circuit declined to weigh any of the evidence presented by the employer. Id. at 278. In other words, the totality of evidence was piled up in the employer's favor and the Fourth Circuit found the totality to be sufficient. The Fourth Circuit did not have the objections, the rebuttal, and the "numbers game" that we have here.

In the present case, we have multiple relevance and hearsay objections, and continuing objections throughout the testimony regarding the eleven non-petition signers that the employer wants counted as non-union. See e.g. Tr. at 203, 239, 274. In fact, in response to hearsay concerns, counsel for the employer stated that the testimony was "with respect to corporate

knowledge and what the Company knew at the time it withdrew recognition,” and *not* for the truth of the matter asserted. Tr. at 203. Continuing objections to the hearsay regarding employee statements were entered and continued throughout the rest of the hearing. See e.g. Tr. at 230-231, 239, 250, 266, 274-275.

Also, as explained further below, the General Counsel put forth a wealth of rebuttal evidence which included attacking the veracity of certain statements and introducing objective signed Cards.

Further, much of the evidence that the Employer intends to use comes from the anti-union employees who were circulating the Petition. Such evidence is entitled to little weight. MSK Corp, 341 NLRB 43, 47-48 (2004) (no weight was given to hearsay statements made by the “principle employee opponents of union representation.”).

For all of these reasons, the Board should not consider the statements regarding the eleven employees in question. Although, the Union disagrees with the reasoning, the ALJ also declined to do so. The Board should consider only the objective evidence as directed by Levitz and compare the numbers on the Petition to the number of Cards signed post-Petition. However, should the Board decide to wade into the subjective statements and the Employer’s good faith regarding the eleven employees’ sentiment, as the Employer invites it to do, it should be noted that the underlying evidence is problematic and entitled to little weight.

The subjective statements that the Employer relies on to argue that the eleven employees should be counted as supporting the Petition are rife with evidentiary issues, entitled to little weight, rebutted by objective evidence, and there is no evidence that the Employer’s

management who was dealing with the negotiations and representations issues either received or relied on statements of the eleven employees in question.

Vice President of Human Resources, Laura Dickerson, testified for the Employer. She did not receive any anti-union statements directly from employees. Tr. at 210. Instead, she appears to be testifying that she received she received information from Employer's counsel, who received information from either supervisors or from the employees who were soliciting the disaffection signatures, who received information from employees who did not want to sign the Petition but still did not want union representation. Tr. at 203-204. Indeed, these statements are cloaked in three levels of hearsay. Not only that, but Dickerson did not identify any specific employee who made these statements, let alone any of the eleven who the employer would now count as anti-union employees. Dickerson also did not testify as to the content of any alleged employee statements.

Shipping Manager, Sean McDonald, also testified for the Employer regarding subjective statements that he heard from Donzell Hennigan and Frank McKenzie. Tr. at 219-221. McDonald did not testify that he relayed these statements to anyone else within the Employer. No one from the Employer testified that the decision to withdraw recognition was based, in any part, on McDonald's recollections with respect to Hennigan or McKenzie.

Maintenance supervisor, Laquint Hargrove, also testified for the Employer regarding subjective statements that he heard from Kelvin Gerald. Tr. at 230-232. Hargrove did not testify that he relayed these statements to anyone else within the Employer. No one from the Employer testified that the decision to withdraw recognition was based, in any part, on Hargrove's recollections with respect to Gerald.

Supervisor/High Performance Teams Coordinator, Barbara Fifer, also testified for the Employer regarding subjective statements that she heard from Kevin Turbeville, Steve Rath, Jacobia Jackson, and William Ford. Tr. at 239-242. She could not recall the dates of any of these statements. Tr. at 244. Fifer did not testify that she relayed these statements to anyone else within the Employer. No one from the Employer testified that the decision to withdraw recognition was based, in any part, on Fifer's recollections with respect to Turbeville, Rath, Jackson, and Ford.

Many subjective statements were also taken by employees Brenda Lynch and Martha Pressley. These were also two employees who started the decertification drive and solicited signatures on the Petition. As such, their statements regarding other employees' anti-union sentiments are inherently unreliable and should be given very little weight. MSK Corp, 341 NLRB at 47-48.

Regarding the subjective statements that the eleven employees are alleged to have made:

1. William Ford – According to Fifer, Ford told her that he “wasn’t for the union.” Tr. at 242. Fifer did not remember the date that Ford told her this. Tr. at 244. Ford signed a Card, reaffirming his desire for Union representation, on May 5, 2015. GC Exh. 20.
2. Kelvin Gerald – According to Hargrove, Gerald told him that “he didn’t want to be part of the union,” and “he didn’t want to be part of that shit.” Tr. at 231-232. Hargrove could not recall the date of these statements. Tr. at 232. The statements are arguably clear that Gerald did not want to be a union member, but not clear that he did not want union representation on the plant. See Pacific Coast Supply, 801 F.3d at 327-328. Lynch also testified that Gerald said, “he was with us,” while she was collecting signatures. Tr. at 253. But apparently not “with them” enough to sign the Petition.

3. Isaac Gilchrist – Isaac Gichrist signed a Card, reaffirming his desire for Union representation, on May 5, 2015. GC Exh. 20. U Exh. 2. His testimony long after the fact, should not be considered, as the card is the best evidence of his intent at the time. See discussion of Gissel in Section IV.B above.
4. Donzell Hennigan – McDonald testified that “in the beginning of the year” Hennigan told him that he would be “glad when the union was gone.” Tr. at 220. Hennigan subsequently signed a Card, reaffirming his desire for Union representation, on May 5, 2015. GC Exh. 20.
5. Jacobia Jackson – According to Fifer, Jackson told he that “he was just tired of it . . . tired of all the stuff in union, nonunion, in and out.” Tr. at 242. Fifer could not recall the date of this statement. Tr. at 244. This is not an anti-union statement, but a statement of his frustration or fatigue with the struggle between union and anti-union advocates in the plant. Lynch said that Jackson said “he was with us.” But not “with them” enough to sign the Petition. Tr. at 262.
6. Marcus McCollum – McCollum testified that he did not sign the Petition or a union Card because he was neutral. Tr. at 299-300.
7. Frank McKenzie - McDonald testified that “in the beginning of the year” McKenzie told him that he would be “wished the union was gone.” Tr. at 221. McKenzie subsequently signed a Card, reaffirming his desire for Union representation, on May 5, 2015. GC Exh. 18.
8. Steven Rath – Fifer testified that Rath, regarding the Union, “wasn’t really against it, wasn’t really for it” and that “he was sick of all this stuff going on.” This is clearly not an anti-union statement. Tr. at 240-241.

9. Marcus Pompey – Pressley testified that Pompey, “wanted to stay neutral; that he didn’t know much about the union but he was for the union, but he wasn’t – just wanted to stay on the neutral side.” Tr. at 275. She did not remember when he made this statement. Pompey signed a Card, reaffirming his desire for Union representation, on May 5, 2015. GC Exh. 21.
10. Kevin Turbeville – Fifer testified that Turbeville told he “didn’t want the union in there.” Tr. at 240. She could not remember the date of this statement. Tr. at 244 Turbeville testified that did not sign the Petition. Tr. at 295.
11. Corintheus Williams – Lynch testified that Williams said “he was with us.” Tr. at 253. With his own testimony, he directly contradicted that statement and said that her, “I was neutral at the time.” Tr. at 278. Williams signed a Card, reaffirming his desire for Union representation, on May 5, 2015. GC Exh. 22.

For these reasons, the evidence in support of including the eleven employees in the tally of anti-union supporters should not be considered at all or given very little weight.

D. The ALJ properly considered the Union authorization Cards.

The Employer argues that the Union’s alleged delay in producing the authorization cards during the investigatory phase of the underlying unfair labor practice charge should result in the Cards being excluded from evidence. Employer Br. at 20. The Employer first relies on the NLRB Casehandling Manual which states that charges may be dismissed for lack of cooperation if the charging party does not submit its evidence. Employer Br. at 22. That is not what happened in this case. The Union submitted its evidence to the Board investigator, the investigation was completed, and a complaint was issued on the charges. Needless to say, the charges were not, in fact, dismissed for lack of cooperation.

The Employer then cites Filene's Basement Store, 299 NLRB 183 (1990) to support the proposition that negative inferences can be drawn against a party when they fail to produce material evidence. Employer Br. at 23. Of course, Filene's Basement Store addresses situations where a party refuses to comply with lawful subpoenas or where witnesses refuse to answer questions after being directed to do so by a hearing officer. In the present case, the ALJ did not conclude that the Union failed to comply with a subpoena or that the Union's witnesses refused to answer proper questions. As such, no negative inferences should be drawn regarding the validity of the authorization cards, nor should the Cards be excluded from evidence.

The Employer also argues that, because of the testimony of three employees regarding their own Cards, all of the Cards should be excluded from evidence. First, any alleged discrepancies with the Card were clarified by the Card's foundation witness and supplementary evidence. The employees who solicited testified as to the authenticity of the Cards and the date that they were signed. Additionally, W-4 forms were introduced as exhibits in order to allow the ALJ to compare signatures from the forms to the signatures on the Cards. U. Exhs. 1-7. As such, the record has been formed and the weight of the evidence can be properly distributed. Second, the Employer has not offered any evidence or case law to support its argument that *all* of the Cards should be excluded from evidence simply because there is competing evidence as to a very small percentage of the total number of Cards.

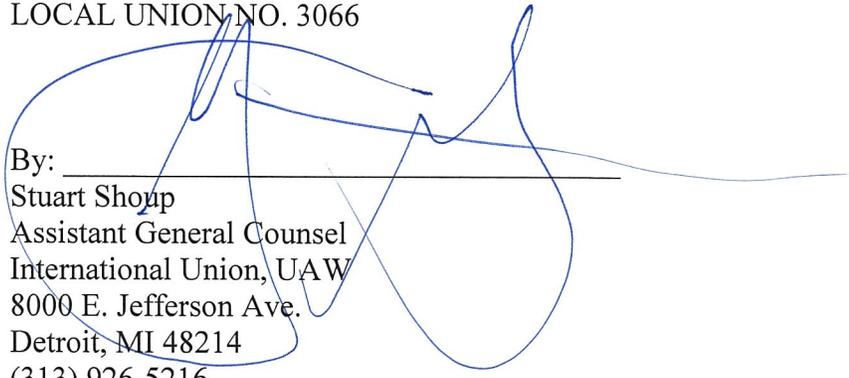
V. CONCLUSION

For all the aforementioned reasons, the Union respectfully requests that the Board reject the Employer's exceptions.

Respectfully Submitted,

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE, AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA, AFL-CIO, AND ITS AFFILIATED
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A large, stylized handwritten signature in blue ink is written over the signature line and extends into the contact information area.

Dated: April 26, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Charging Party International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO and its Affiliated Local Union No. 3066 in Support of its Exceptions to the Decision of the Administrative Law Judge has been served via email on the following parties on the date below:

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Dated this 26th day of April, 2016.

