

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

PAC TELL GROUP, INC. D/B/A U. S. FIBERS

And

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS UNION, LOCAL 7898

Cases 10-CA-121231
10-CA-128904
10-CA-132482
10-CA-145740
10-CA-160256

**CHARGING PARTY UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC'S MOTION TO TRANSFER CASE TO
AND CONTINUE PROCEEDINGS BEFORE THE BOARD AND FOR SUMMARY
JUDGMENT**

Charging Party United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, AFL-CIO, CLC, Local 7898 ("United Steelworkers" or "Union") joins Counsel for the General Counsel in moving to transfer the above-captioned cases before the Board and for summary judgment. Counsel for the General Counsel and the Union allege that Respondent, Pac Tell Group, Inc. d/b/a U.S. Fibers ("Respondent" or "Company"), violated Section 8(a)(1) and (5) of the National Labor Relations Act ("NLRA" or "Act") by imposing discretionary discipline on seven employees without providing the Union advance notice and an opportunity to bargain. The Complaint in the above-captioned cases requests reinstatement and make-whole remedies in response to these violations.

The Respondent admits that it issued discretionary discipline without providing the Union notification or an opportunity to bargain and, in so doing, violated the Act. In April of 2015, the Respondent, the Union, and Counsel for the General Counsel entered into a stipulation in which the Respondent agreed to waive all defenses except its argument that Section 10(c) of

the Act bars the remedy requested in the Complaint. In January of 2016, the parties agreed to include a new charge¹ in the April stipulation. On February 4, 2016, the Regional Director issued an Order Further Consolidating Cases, Fifth Amended Consolidated Complaint, and Notice of Hearing. The Respondent submitted its Answer on February 18, 2016, admitting that “Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and 8(a)(5) of the Act.” See Feb. 4, 2016 Order at para. 13, attached as Exhibit A, and Respondent’s Feb. 17, 2016 Answer at para. 13, attached as Exhibit B.

In its Answer, the Respondent admitted to all material facts.² The only remaining dispute is a legal question: whether, as the Respondent contends, Section 10(c) of the Act bars Counsel for the General Counsel and the Union from requesting reinstatement and make-whole remedies. The Respondent is incorrect. Make-whole relief is the appropriate remedy for an *Alan Ritchey* violation because 1) the *Alan Ritchey* opinion demonstrates that the Board intended a make-whole remedy; 2) the *Alan Ritchey* rule is meaningless absent make-whole relief; and 3) Section 10(c) does not apply to *Alan Ritchey* violations.

ARGUMENT

1. The *Alan Ritchey* Board intended a make-whole remedy.

In *Alan Ritchey*, the Board found that discretionary discipline is a mandatory subject of bargaining.³ The Board went on to conclude that “retroactive application [of the new policy] would cause ‘manifest injustice,’” and did not explicitly state the remedy for an *Alan Ritchey*

¹ The Union filed this charge over employee Rudy Perez’s termination. The case number is 10-CA-160256.

² Counsel for the General Counsel describes in detail all undisputed material facts at pp. 3-8 of his brief.

³ *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014) later invalidated *Alan Ritchey* on constitutional grounds unrelated to the merits of the case. In a recent advice memo, the Board’s Office of the General Counsel indicated that the Board should continue to apply the reasoning articulated in *Alan Ritchey*. “It is the General Counsel’s position that *Alan Ritchey* was soundly reasoned and that the Board should adopt the *Alan Ritchey* rationale as its own.” *Washington River Protection Solutions*, 19-CA-125339, Div. of Advice Memo (Oct. 14, 2014) at fn. 1.

violation. *Id.* at *15. The opinion indicates, however, that the Board intended to provide a make-whole remedy.

First, when deciding against imposing retroactive relief, the Board stated: “. . . [R]etroactive application of our holding could well catch many employers by surprise and, moreover, expose them to *significant financial liability* insofar as discharges and other disciplinary actions that could *trigger a backpay award* are involved.” *Id.* at *16 (emphasis added). The Board’s language is clear; remedying an *Alan Ritchey* violation includes making the wronged employee whole. *See also LM Waste Service Corp.*, 360 NLRB No. 105 (2014) (upholding ALJ decision ordering company to make affected employees whole for *Alan Ritchey* violation).

Second, even if the Board had not specifically mentioned employer financial liability, the Board’s decision to avoid retroactive relief indicates a make-whole remedy. The Board explained:

‘The Board’s usual practice is to apply all new policies and standards to all pending cases in whatever stage.’ . . . [W]e apply new rules and other changes prospectively where retroactive application would cause ‘manifest injustice.’

Id. at *15 (internal citations omitted). Simply ordering the employer to bargain with the union would not cause manifest injustice.⁴ The Board decided to depart from its usual practice because it intended on ordering retroactive backpay and other make-whole remedies.

2. The rule announced in *Alan Ritchey* is meaningless without a make-whole remedy.

That the Board intended to remedy *Alan Ritchey* violations by making employees whole is not surprising. Without a make-whole remedy, the new rule announced in *Alan Ritchey* is meaningless: employers could freely apply discretionary discipline, knowing they face no

⁴ The *Alan Ritchey* Board clarified that the employer’s bargaining obligation was “narrow” and that “an employer need not wait an *overall* impasse in bargaining before imposing discipline, so long as it exercises its discretion within existing standards.” *Id.* at 13, 12 (internal citations omitted).

financial consequences. This lack of employer accountability is especially troubling given that *Alan Ritchey* typically applies after employees have elected a union representative but before that representative has bargained the first collective bargaining agreement. Allowing employers to unilaterally impose discretionary discipline during this critical time indicates to the newly unionized workforce that their bargaining representative and the collective bargaining process is ineffective.

The *Alan Ritchey* opinion raised this precise concern:

To hold otherwise, and permit employers to exercise unilateral discretion over discipline after employees select a representative—i.e., to proceed with business as usual despite the fact that the employees have chosen to be represented—would demonstrate to employees that the Act and the Board’s processes implementing it are ineffectual, and would render the union (typically, newly certified) that purportedly represents the employees impotent. . . . If, after employees follow this path [of electing a union], their chosen representative can lawfully be denied the opportunity to represent them, especially in such a critical context as significant disciplinary action, the employees might reasonably conclude their statutory rights are illusory.

Id. at *14. Simply ordering the employer to bargain over its implementation of discretionary discipline would not address the concerns raised by the Board. Employers could easily undermine the union by unilaterally imposing discretionary discipline during first contract negotiations, knowing that the only consequence is a possible bargaining order. Providing for make-whole relief ensures that employers will not take advantage of a critical time for a newly organized workforce.

3. Section 10(c) of the Act does not bar make-whole relief for an *Alan Ritchey* violation.

Section 10(c) does not apply to *Alan Ritchey* violations. Section 10(c) provides, in relevant part: “No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause.” The Board has recognized that Congress did not define

“for cause” in 10(c) and has clarified the scope of the phrase. *See Anheuser-Busch, Inc.*, 351 NLRB 644, 647 (2007).

Specifically, the Board has explained that, “. . . [A] termination of employment that is accomplished without bargaining with the representative union is unlawful under Section 8(a)(5) and is not ‘for cause.’” *Id.* at 648. Therefore, the Board has already anticipated and addressed the Company’s argument. “For cause” does not include situations in which the employer does not bargain with the union prior to imposing discipline.

When the Board has found that 10(c) does preclude a make-whole remedy, the analysis concerns the sufficiency of the “nexus” between the unfair labor practice and the motivation for the discipline. *See Anheuser-Busch, Inc.*, 351 NLRB at 649 (insufficient nexus between the unfair labor practice of unilaterally installing video cameras and terminating employees for on-site drug use); *Taracorp Industries*, 273 NLRB 221 (1984) (insufficient nexus between the unfair labor practice of denying employee a union representative during a disciplinary meeting and terminating the employee for misconduct). In contrast, under *Alan Ritchey*, the nexus is established: the unfair labor practice *is* the unilateral imposition of discretionary discipline. Unlike the examples above in which the employer committed an unfair labor practice and then imposed discipline, the Board has determined that imposing discretionary discipline without bargaining with the union violates the Act *in and of itself*.

Moreover, in an *Alan Ritchey* situation the discipline cannot be “for cause” because the employer has full discretion in deciding whether to impose discipline. There is no established standard which the employer is using to determine the appropriate amount of discipline. If the Board finds that instances of discretionary discipline are “for cause” within the meaning of 10(c), employers are free to apply the greatest amount of discipline after a workforce successfully

organizes and before its employees enjoy the protection of a collective bargaining agreement. Such an interpretation of the Act would undermine the newly elected bargaining representative.

CONCLUSION

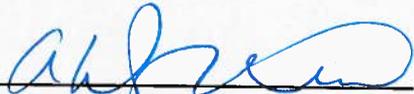
The Company has admitted to violating Section 8(a)(1) and (5) of the Act by imposing discretionary discipline without notifying and bargaining with the Union. The Company claims that 10(c) precludes the Board from remedying this violation. The Company is incorrect. As demonstrated above, the Board intended make-whole relief to remedy an *Alan Ritchey* violation, the rule announced in *Alan Ritchey* is meaningless without make-whole relief, and 10(c) does not foreclose make-whole relief.

Therefore the Union joins Counsel for the General Counsel in respectfully requesting that:

- (A) This case be transferred to and continued before the Board;
- (B) The allegations of the Complaint be found to be true;
- (C) This Motion for Summary Judgment be granted; and
- (D) The Board issue a Decision and Order containing findings of fact and conclusions of law in accordance with the allegations of the Complaint, and remedying Respondent's unfair labor practices by including a provision that includes backpay and reinstatement for the suspended and discharged employees, and any other relief as is deemed just and proper.

Date: May 25, 2016

Respectfully submitted,



Antonia O. Domingo
Assistant General Counsel
United Steel, Paper and Forestry,
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CERTIFICATE OF SERVICE

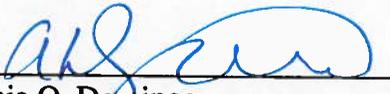
I hereby certify that copies of the foregoing Motion to Transfer Case and Continue Proceedings Before the Board and for Summary Judgment with attachments have this date been served electronically upon the following parties:

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Date: May 25, 2016



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Pittsburgh, PA 15222

Exhibit A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11

PAC TELL GROUP, INC. d/b/a U.S. FIBERS

and

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED-INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, LOCAL
7898

Cases 10-CA-121231
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10-CA-145740
10-CA-160256

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LEAD DEPARTMENT
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**ORDER FURTHER CONSOLIDATING CASES, FIFTH AMENDED
CONSOLIDATED COMPLAINT, AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, **IT IS ORDERED** that Cases 10-CA-121231, 10-CA-128904, 10-CA-132482, and 10-CA-145740, filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, Local 7898 (the Union) against Pac Tell Group, Inc. d/b/a U.S. Fibers (Respondent), in which an Order Consolidating Cases, Fourth Consolidated Complaint and Notice of Hearing issued on April 6, 2015, are consolidated with Case 10-CA-160256 filed by the Union against Respondent.

This Order Further Consolidating Cases, Fifth Amended Consolidated Complaint, and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 20 U.S.C. Section 151 et seq. (the Act), and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below:

1.

The charges were filed by the Union and served upon Respondent by U.S. mail, as set forth in the following table:

<i>Case Number</i>	<i>Amendment</i>	<i>Date Filed</i>	<i>Date Served</i>
Case 10-CA-121231		January 23, 2014	January 27, 2014
Case 10-CA-121231	First Amended	June 25, 2014	June 26, 2014
Case 10-CA-121231	Second Amended	November 25, 2014	November 26, 2014
Case 10-CA-128904		May 16, 2014	May 19, 2014
Case 10-CA-128904	First Amended	June 25, 2014	June 26, 2014
Case 10-CA-128904	Second Amended	November 25, 2014	November 25, 2014
Case 10-CA-132482		July 10, 2014	July 10, 2014
Case 10-CA-132482	First Amended	August 11, 2014	August 11, 2014
Case 10-CA-145740		February 4, 2015	February 4, 2015
Case 10-CA-145740	First Amended	February 19, 2015	February 19, 2015
Case 10-CA-145740	Second Amended	March 3, 2015	March 4, 2015
Case 10-CA-145740	Third Amended	March 31, 2015	April 1, 2015
Case 10-CA-160256		September 17, 2015	September 18, 2015
Case 10-CA-160256	First Amended	December 1, 2015	December 2, 2015

2.

At all material times, Respondent has been a corporation with an office and place of business in Trenton, South Carolina (Respondent's Trenton facility), and has been engaged in the manufacture and the nonretail sale of recycled polyester fiber.

3.

In conducting its operations described above in paragraph 2, Respondent annually purchases and receives at its Trenton facility, goods valued in excess of \$50,000 directly from points outside the State of South Carolina.

4.

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6.

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Edward Oh	—	CEO and President
Ted Oh	—	Vice President of Operations
Kevin Corey	—	Director of Manufacturing
Eduardo Sanchez	—	Production Manager

Alexandra Peake	—	Human Resources Manager
Kyong Kang	—	Production Superintendant
Glenn Jang	—	Production Manager
Juan Joel Galvan	—	Extrusion Foreman
Ruben Regino	—	Maintenance Foreman
Ignacio Munoz Bamaca	—	Building 2 Foreman
Carlos Vicente	—	Extrusion Foreman
Edwin Vicente	—	Stretch Line Foreman
Charles Williams	—	Supervisor
Renee Moreland	—	Plant Manager
Antonio Garcia	—	Extrusion Foreman

(b) At all material times through September 30, 2013, Joey Walker held the position of Maintenance Manager and was a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

(c) At all material times, Crystal Busbee held the position of Executive Assistant and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

7.

The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, janitorial, warehousemen, shipping and maintenance employees employed by Respondent at its Trenton, South Carolina facility, excluding all other employees, including office clerical employees, professional and confidential employees, guards and supervisors as defined in the Act.

8.

(a) On May 29 and 30, 2013, a representation election was held among the Unit in Case 10-RC-101166. The Tally of Ballots showed that a majority of Unit employees voted for the Union to represent them as their collective-bargaining representative.

(b) On September 13, 2013, the Regional Director for Region 10 issued a Supplemental Decision in Case 10-RC-101166, overruling Respondent's Objections to the election, and certified the Union as the exclusive collective-bargaining representative of the Unit.

(c) Upon Respondent's Request for Review of the Regional Director's Supplemental Decision, the Board, by unpublished Decision issued September 22, 2014, overruled Respondent's Objections to the election and remanded proceedings to the Regional Director for further appropriate action consistent with the Board's Decision.

(d) On September 23, 2014, the Regional Director for Region 10 again certified the Union as the exclusive collective-bargaining representative of the Unit.

9.

At all times since May 30, 2013, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

10.

(a) On October 29, 2014, Respondent issued a warning to its employee Gabriel Lopez.

(b) About September 9, 2015, Respondent suspended its employee Rudy Perez.

(c) Respondent discharged the following employees on about the date set forth opposite their names:

Jose Lal	—	January 21, 2014
David Martinez	—	February 5, 2014
Roberto Sanchez	—	May 5, 2014
Ventura Perez	—	May 15, 2014
Emilio Garcia	—	July 9, 2014
Gabriel Lopez	—	January 12, 2015
Rudy Perez	—	September 15, 2015

11.

The subjects set forth above in paragraph 10 relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

12.

Respondent engaged in the conduct described above in paragraph 10 without prior notice to the Union and without affording the Union the opportunity to bargain with Respondent concerning this conduct.

13.

By the conduct described above in paragraphs 10 and 12, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and 8(a)(5) of the Act.

14.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 10(c), 12, and 13, the General Counsel seeks an Order requiring Respondent to reinstate the employees named in that paragraph to the positions they held immediately prior to their discharge.

As part of the remedy for the unfair labor practices alleged above in paragraphs 10(b), 10(c), 12, and 13, the General Counsel seeks an Order requiring Respondent to make the employees whole for all wages, benefits, and other losses, including reasonable consequential damages, they incurred as a result of Respondent's unlawful conduct, and to expunge the discipline issued to the employees and to notify the parties that this has been done.

As further remedy for the unfair labor practices alleged above in paragraphs 10(c), 12, and 13, the General Counsel seeks an order requiring that Respondent reimburse the employees for all search-for-work and work-related expenses regardless of whether the employee received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period.

As a further part of the remedy for the unfair labor practices alleged above in paragraphs 10, 12, and 13, the General Counsel seeks an Order requiring that Respondent's Vice President of Operations Ted Oh, at a meeting or meetings scheduled to ensure the widest possible attendance, read the notice to the employees in English and in

Spanish on worktime in the presence of a Board Agent. Alternatively, the General Counsel seeks an Order requiring that Respondent promptly have a Board Agent read the notice to employees in English and in Spanish at such a meeting or meetings held on worktime in the presence of Respondent's supervisors and agents identified above in paragraph 6.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the fifth amended consolidated complaint. The answer must be **received by this office on or before February 18, 2016, or postmarked on or before February 17, 2016.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than two hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an

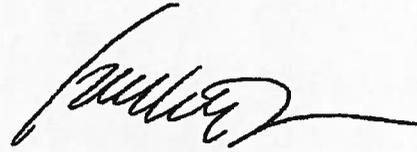
answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the fifth amended consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 28th day of March 2016, at 10:00 a.m. at a location to be determined in Edgefield, South Carolina, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this fifth amended consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: February 4, 2016

**Claude T. Harrell Jr.
Regional Director
National Labor Relations Board
Region 10, By**



**Scott C. Thompson
Officer-In-Charge
National Labor Relations Board
Subregion 11
4035 University Pkwy Ste 200
Winston-Salem, NC 27106-3275**

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. You may be represented at this hearing by an attorney or other representative. If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 10-CA-121231, 10-CA-128904,
10-CA-132482, 10-CA-145740,
10-CA-160256

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Exhibit B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11

PAC TELL GROUP, INC. d/b/a U.S. FIBERS)	
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and)	Cases 10-CA-121231
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ALLIED-INDUSTRIAL AND SERVICE)	10-CA-160256
WORKERS INTERNATIONAL UNION,)	
LOCAL 7898)	

RESPONDENT PAC TELL GROUP, INC. d/b/a U.S. FIBERS' ANSWER TO THE FIFTH AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Respondent Pac Tell Group, Inc. d/b/a U.S. Fibers (Respondent), by and through the undersigned counsel, hereby answers the Order Further Consolidating Cases, Fifth Amended Consolidated Complaint, and Notice of Hearing (Complaint), issued on February 4, 2016, as follows:

FOR A FIRST DEFENSE

1.

With respect to Paragraph 1 of the Complaint, Respondent admits that the charges set forth were filed and served on or about the dates alleged. The remainder of Paragraph 1 of the Complaint is denied.

2.

Paragraph 2 of the Complaint is admitted.

3.

Paragraph 3 of the Complaint is admitted.

4.

Paragraph 4 of the Complaint is admitted.

5.

Paragraph 5 of the Complaint is admitted.

6(a).

With respect to Paragraph 6(a) of the Complaint, Respondent admits that Edward Oh, Ted Oh, Kevin Corey, Eduardo Sanchez, Alexandra Peake, Kyong Kang, Glen Jang, Charles Williams, and Renee Moreland were supervisors as defined in Section 2(11) of the Act at all material times. Respondent admits that Juan Joel Galvan, Ignacio Bamaca, Carlos Vicente, and Edwin Vicente became supervisors when they were promoted to Foreman on or about October 7, 2013. Ruben Regino became a supervisor when he was promoted to Foreman on or about May 19, 2014. Antonio Garcia became a supervisor when he was promoted to Foreman on or about April 30, 2015. The remainder of Paragraph 6(a) is denied.

6(b).

Paragraph 6(b) of the Complaint is admitted.

6(c).

Paragraph 6(c) of the Complaint is admitted.

7.

Paragraph 7 of the Complaint is admitted.

8.

Paragraph 8 of the Complaint, including all subparts therein, is admitted.

9.

Paragraph 9 of the Complaint is admitted.

10.

With regard to Paragraph 10 of the Complaint, Respondent avers that all actions referred to were taken for cause within the meaning of Section 10(c) of the Act. The remainder of Paragraph 10, including all subparts therein, is admitted.

11.

Paragraph 11 of the Complaint is admitted.

12.

Paragraph 12 of the Complaint is admitted.

13.

Paragraph 13 of the Complaint is admitted.

14.

Paragraph 14 of the Complaint is admitted.

15.

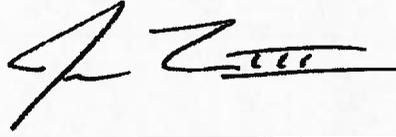
Responding to the unnumbered prayer for remedial relief that immediately follows Paragraph 14 of the Complaint, Respondent denies that the General Counsel is entitled to a make whole remedy for the individuals listed in Paragraph 10. Such relief would be barred by Section 10(c) of the Act, because said individuals were disciplined/discharged for cause.

FOR A SECOND DEFENSE

To the extent the Complaint seeks back pay and reinstatement as remedies for any employee whose employment was suspended or terminated for cause, said remedies are barred by 29 U.S.C. §160(c). Respondent reserves the right to challenge the remedy in response to a motion for summary judgment that may be filed in this case.

Date: February 17, 2016

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

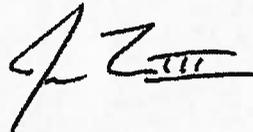
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11

PAC TELL GROUP, INC. d/b/a U.S. FIBERS)	
)	
and)	CASES 10-CA-104438
)	10-CA-115819
UNITED STEEL, PAPER AND FORESTRY,)	10-CA-121172
RUBBER, MANUFACTURING, ENERGY,)	10-CA-121231
ALLIED-INDUSTRIAL AND SERVICE)	10-CA-128904
WORKERS INTERNATIONAL UNION,)	10-CA-132482
LOCAL 7898)	

CERTIFICATE OF SERVICE

It is hereby certified that on February 17, 2016, the foregoing Answer to the Fifth Amended Consolidated Complaint in the above-captioned cases has been filed electronically and served on the following via U.S. Mail and via Email:

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Reyburn W. Lominack, III, Esquire