

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

INTERNATIONAL SHIPPING AGENCY,
INC. AND MARINE TERMINAL SERVICES,
INC., AND TRUCK TECH SERVICES, INC.
SINGLE EMPLOYER

and

INTERNATIONAL SHIPPING AGENCY,
INC. AND TRUCK TECH SERVICES, INC.
SINGLE EMPLOYER

and

UNION DE EMPLEADOS DE MUELLES
(UDEM), ILA 1901, AFL-CIO

Case 24-CA-091723;
24-CA-104185;
12-CA-129846;
12-CA-133402;
12-CA-135453;
12-CA 135704;
12-CA-136480;
12-CA-142493;
12-CA-143597;
12-CA-144073.

RESPONDENTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE DECISION

TO THE NATIONAL LABOR RELATIONS BOARD:

COME NOW Respondents through their undersigned counsel and respectfully state and request as follows:

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondents by and through the undersigned counsel hereby files the following exceptions to the ALJ's March 30, 2016 decision:

- A. Respondents except to the ALJ's finding that Respondents' subcontracted MTS' work or that they redistributed Intership's chassis upkeep functions to Frank's Chassis – *see* ALJ's Decision pg. 4:6; 18:40-41; 19:2-5; 19:10-12; p. 20, n. 55; 21:35; 23:24-26 – on the grounds that the records lacks an evidentiary showing to

support the same, and that in any case these conclusions do not reflect the evidence in the record as a whole.

- B. Respondents except to the ALJ's finding that the MTS' closing is not a “closing of part of a business” or a “going out of a business” under *First National Maintenance*, 452 U.S. 666 (1981) – see ALJ's Decision pg. 18:39-19:5. Particularly, the ALJ's finding was in error not only as to his factual premise that the MTS' services had been subcontracted, but *independently* and *in any case*, by centering the analysis in the Parent Company's core business rather than in the dismantled line of business as it should have been. Consequently, Respondents except to the ALJ's finding that 8(a)(5) was violated for not having bargained with the Union the decision to close MTS - see ALJ's Decision pg. 17:36 - and the corresponding section of the proposed Remedies – see ALJ's Decision pg. 26-30.
- C. In the alternative, and in any case, Respondents except to the ALJ's finding that the General Counsel made a *prima facie* showing under *Dubuque Packing Co.*, 303 NLRB 386 (1991) – see ALJ's Decision pg. 19:29 – and its corresponding premise that the closing of MTS amounts to an action “unaccompanied by a basic change in the nature of the employer's operation” and in the “scope and direction of the enterprise” - see ALJ's Decision pg. 19:41. Particularly, the ALJ's finding is in error for coming to this conclusion lacking evidentiary showing, in contradiction to the record as whole including other findings, and on inapposite precedents. Consequently, Respondents except to the ALJ's finding that 8(a)(5)

was violated for not having bargained with the Union the decision to close MTS - see ALJ's Decision pg. 17:36 – and the corresponding section of the proposed Remedies – see ALJ's Decision pg. 26-30.

- D. In any case, Respondents except to the ALJ's sub silentio finding that an obligation to bargain with the Union in MTS had arisen. See ALJ's Decision, pg. 17:34-37. In particular, the ALJ erred in simply assuming, without deciding, that any such obligation had arisen even though the Respondents raised the lack of such obligation in their answers to the Complaint, litigated the matter during the hearing, and thoroughly briefed it in their Post Hearing Memorandum. Consequently, Respondents except to the ALJ's finding that 8(a)(5) was violated for not having bargained with the Union the decision to close MTS or its effects - see ALJ's Decision pg. 17:36- and to the corresponding section of the proposed Remedies – see ALJ's Decision pg. 26-30.
- E. In any case, Respondents except to the sub silentio finding that the Union did not waive its right to bargain regarding MTS. See ALJ's Decision, pg. 17:34-37. In particular, the ALJ erred in simply assuming, without deciding, that the Union did not waive any right it might had had to bargain in respect to MTS even though the Respondents raised the waiver of such obligation in their answers to the Complaint, litigated the matter during the hearing, and thoroughly briefed it in their Post Hearing Memorandum. Consequently, Respondents except to the ALJ's finding that 8(a)(5) was violated for not having bargained with the Union

the decision to close MTS or its effects - see ALJ's Decision pg. 17:36- and to the corresponding section of the proposed Remedies – see ALJ's Decision pg. 26-30.

- F. Respondents except to the ALJ's finding that the closing of MTS violated 8(a)(3) without due regard to *Textile Workers Union v. Darlington Mfg. Co., 380 U.S. 263 (1965)* – see ALJ's Decision pg. 21:37. Particularly, the ALJ erred in not applying *Darlington* to the case at hand, and in not finding pursuant to the record as a whole that there was no evidence capable of establishing purpose and effect of chilling imminent unionization activities in the other part of the business. Consequently, Respondents except to the finding that the closing of MTS violated 8(a)(3) – see ALJ's Decision, pg. 21:37- and to the corresponding section of the proposed Remedies pertaining to a 8(a)(3) violation – see ALJ's Decision pg. 26-30.
- G. In the alternative, the ALJ erred in finding that Intership would not have closed MTS operation absent protected activities- see *ALJ's Decision* pg. 23:24-25 – for said determination lacks an evidentiary showing to support the same, and in any case is not supported by the record as a whole including what detracts from this conclusion and the ALJ's previous contradictory determinations. Consequently, Respondents except to the finding that the closing of MTS violated 8(a)(3) – see ALJ's Decision, pg. 21:37; 25:43- and to the corresponding section of the proposed Remedies pertaining to a 8(a)(3) violation – see ALJ's Decision pg. 26-30.

- H. Respondents except to the ALJ's finding that TTS's employees engaged in protected activity or “began considering unionizing” and that the Employer had any knowledge of the same – see ALJ's Decision pg. 24;7 – on the grounds that the record lacks an evidentiary showing to support the same, and that in any case these conclusion are in contradiction to the record as a whole including admissions from the Union's President. Consequently, Respondents also except from to the ALJ's finding that the General Counsel met his prima facie showing under *Wright Line* in regards to the closing of TTS – see ALJ's Decision pg. 24; 6 – from the finding of an 8(a)(3) violation in regards to the closing of TTS – see ALJ's Decision pg. 21:37; 25:43 - and from the corresponding section of the proposed Remedies pertaining to a 8(a)(3) violation – see ALJ's Decision pg. 26-30.
- I. Respondents except to the ALJ's finding that the TTS closing was not a partial closing because Respondents subcontracted TTS' work to Tribo Tech – see ALJ's Decision pg. 4;7- 8 & 23;40 n. 61 – on the grounds that the record lacks an evidentiary showing to support the same. Consequently, Respondents also except to the ALJ's finding of an 8(a)(3) violation in regards to the closing of TTS – see ALJ's Decision pg. 21:37; 25:43- and to the corresponding section of the proposed Remedies pertaining to a 8(a)(3) violation – see ALJ's Decision pg. 26-30.
- J. In the alternative, Respondents except to the ALJ's finding that Respondents would not have closed TTS operation absent protected activities – see ALJ's Decision, pg. 24:12-13 – on the grounds that it is not supported by substantial

evidence in the record as a whole including what detracts from it and the ALJ's other contradictory determinations. Consequently, Respondents also except to the ALJ's finding of an 8(a)(3) violation in regards to the closing of TTS – see ALJ's Decision pg. 21:37; 25:43- and to the corresponding section of the proposed Remedies pertaining to a 8(a)(3) violation – see ALJ's Decision pg. 26-30.

- K. Respondent except to the ALJ's finding that Sosa and Caraballo engaged in acts of violence that violated the Act – see ALJ's Decision pg. 16;27. Particularly, the ALJ erred in not considering the totality of the circumstances, the lack of evidence regarding interference with protected or even the uncontested evidence to the contrary even if the Charging Party's description of the events was credited. Consequently, Respondents also except to the corresponding section of the proposed Remedies pertaining this alleged violation – see ALJ's Decision pg. 26-30.

AFFIDAVIT OF SERVICE OF BRIEF IN SUPPORT OF RESPONDENTS' EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE DECISION

The undersigned hereby certifies that a true and correct copy of this Brief in Support of Respondents' Exception to the Administrative Law Judge Decision was served on this 27th day of May 2016 upon the following persons through email:

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Respectfully submitted,

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