

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

THE RUPRECHT COMPANY

and

**Cases 13-CA-155048
13-CA-155049
13-CA-156198
13-CA-158317**

UNITE HERE LOCAL 1

**COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE
AND BRIEF IN SUPPORT**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Daniel E. Murphy, Counsel for the General Counsel, respectfully files these Exceptions and brief in support of said Exceptions to the May 13, 2016, Decision of Administrative Law Judge Joel P. Biblowitz.¹ Counsel for the General Counsel excepts to certain portions of the ALJ's Remedy and Order Sections in order to clarify and correct a seemingly inadvertent failure of the ALJ to order certain remedies inherent to the violations he found in the Conclusions of Law. Specifically, Counsel for the General Counsel excepts to the following:

1. The ALJ's apparently inadvertent failure to include a remedy for the determination that the Respondent bypassed the Union and dealt directly with its employees about severance pay to be paid to terminated Employees (ALJD 18, lines 15-20.)
2. The ALJ's apparently inadvertent failure to include in his Order (in paragraph 2) a conventional make-whole remedy for bargaining unit employees that may have suffered a loss of earnings or other benefits as a result of the Respondent's unlawful unilateral transfer of bargaining unit work to temporary employees. (ALJD 19).

¹ Throughout these Exceptions and Brief, General Counsel's exhibits will be referred to as "GCX," and Respondent's exhibits will be referred to as "RX. ." Transcript references will be referred to as "Tr. ." The Administrative Law Judge will be referred to as "ALJ," the National Labor Relations Board will be referred to as the "Board," and the National Labor Relations Act will be referred to as the "Act." With respect to the parties in this case, UNITE HERE Local 1 will be referred to as the "Union," The Ruprecht Company will be referred to as the "Respondent" or "Ruprecht". Citations to the Administrative Law Judge's Decision will be referred to as "ALJD." followed by the page and, if applicable, specific paragraph or line numbers.

3. The ALJ's apparently inadvertent failure to include in his Order a paragraph requiring the Respondent to preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. (ALJD 19).

4. The ALJ's apparently inadvertent failure to include in his Proposed Notice language to the effect that the Respondent: (ALJD 19)

[W]ill make whole unit employees for any loss of earnings and other benefits they may have suffered as a result of our unlawful unilateral transfer of bargaining unit work to temporary employees.

FACTS AND ARGUMENTS IN SUPPORT OF EXCEPTIONS

The ALJ correctly determined that the Respondent violated the Section 8(a)(5) and (1) of the Act by: 1) unilaterally transferred bargaining unit work to temporary employment agency employees without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct; 2) unilaterally enrolling and implementing the E-Verify employment eligibility verification program without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct; 3) bypassing the Union and dealing directly with its employees about severance pay to be paid to employees terminated as a result of the HSI investigation; and, (4) failing to furnish the Union with the unredacted documents containing the names of employees with suspect employment documents upon request. (ALJD 17-18, Conclusions of Law paragraph 3). The ALJ erred, however, in structuring the appropriate remedy for the violations.

First, as explained in Exception number 1, the ALJ failed to include a recommendation for remedying Respondent's bypassing and direct dealing violation (ALJD 18, 10-21). In the "Remedy" Section, the ALJ lists the violations he is ordering a remedy for in the preceding "Conclusions of Law" but simply omits any list remedy regarding the third violation in those conclusions, namely, Respondent's bypassing of the Union and direct dealing with employees about severance pay. As part of the Remedy Section Respondent should be ordered to cease and desist bypassing the Union and dealing directly with employees about severance pay to be paid to them.

Second, although the ALJ expressly included that Respondent should be required to “restore the status quo ante by restoring the unit to where it would have been without the use of temporary employees” and left for the compliance stage the issue of whether backpay is due as a result of that (ALJD 18, 10-15), the ALJ did not include in his Order (in paragraph 2) a conventional make-whole remedy for bargaining unit employees that may have suffered a loss of earnings or other benefits as a result of the Respondent’s unlawful unilateral transfer of bargaining unit work to temporary employees. (ALJD 19)

With the addition of a make-whole remedy to the remedial portion of this case, Counsel for the General Counsel additionally submits that it is also appropriate to add standard language requiring the Respondent to provide the Board access to its books and records to determine whether backpay is appropriate for the impacted bargaining unit employees (Exception 3). Similarly, if the Board agrees with the ALJ and finds that a make whole remedy is appropriate in this matter regarding the unlawful transfer of unit work, said remedy should be included in the Notice to Employees, as noted in Exception 4.

CONCLUSION

For the foregoing reasons, Counsel for the General Counsel submits that it is appropriate to correct the apparent inadvertent errors in the remedial aspects of the ALJ’s decision in this case.

Dated in Chicago, Illinois this 24th day of June, 2016.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge and Brief in support was electronically filed with Executive Secretary's Office of the National Labor Relations Board on June 24, 2016 and true and correct copies of the document have been served on the parties listed below by e-mail on that same date.

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