

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KAPSTONE PAPER AND PACKAGING
CORPORATION

and

Cases 19-CA-160107
19-CA-160108
19-CA-160161
19-CA-160175

ASSOCIATION OF WESTERN PULP AND
PAPER WORKERS LOCAL 153, AFFILIATED
WITH THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA

COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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Pursuant to § 102.46(a) of the Board's Rules and Regulations, Series 8, as amended, Counsel for the General Counsel hereby file the following exceptions to the Decision of Administrative Law Judge Lisa D. Thompson (the "Judge") dated November 17, 2016, based upon evidence presented during a 5-day hearing following issuance of a Third Amended Consolidated Complaint (the "Complaint") on January 22, 2016. Counsel for the General Counsel take exception to the following:¹

- 1) The Judge's finding (JD 4:24) that the public right-of-way area outside the fog lines of the road, where picketers were trained they could stand/picket, was "in the middle of Fibre Way."
- 2) The Judge's finding (JD 4:25-26) that the right-of-way area where picketers were trained they could stand/picket was also used by trucks to enable them to negotiate the sharp left out of the truck exit onto Fibre Way.
- 3) The Judge's finding (JD 5:19-20) that the entire incident involving Blanchard and the Delta Fire truck was caught on video.
- 4) The Judge's finding (JD 5:24-26; 14:15) that the video evidence does not support Blanchard's account that he kicked the Delta Fire truck because the driver blew his horn and taunted the picketers to the extent that the finding ignores un-rebutted testimony.
- 5) The Judge's finding (JD 5:26-29) that, while Blanchard believed that the Delta Truck driver was a scab, the driver was not performing any bargaining unit work at Respondent's Mill.
- 6) The Judge's conclusion (JD 6:3-4) that the substance of what occurred regard the incident involving Blanchard and the white Tahoe turns on credibility.
- 7) The Judge's conclusion (JD 6:4) that she carefully reviewed the record.
- 8) The Judge's finding (JD 6:9-11; 19:43) that it was a picketer who said "there's another one" as the Tahoe approached the edge of Respondent's property line while exiting the Mill site.
- 9) The Judge's finding (JD 6:11-13) that Blanchard and fellow picketers "gathered" in front of the Tahoe and "blocked" the vehicle's egress.
- 10) The Judge's finding (JD 6:14-15) that the Tahoe came to a full stop with Blanchard and the picketers gathered in front of and swarming the vehicle to the extent that the Judge fails to find that the video evidence shows that the Tahoe came to a brief stop only after striking Blanchard in the legs while Blanchard was patrolling outside of Respondent's property.
- 11) The Judge's finding (JD 6:15-17) that, while swarming the vehicle, the picketers appear to hit the vehicle either with their picket signs or picket sticks.

¹ References to the Administrative Law Judge's Decision appear as (JD____:____), which shows the page and line, respectively.

- 12) The Judge's finding (JD 6:17) that the Tahoe tried to "inch" forward.
- 13) The Judge's finding (JD 6:20-21) that while the vehicle stopped, Blanchard attempted to jump onto the hood of the vehicle.
- 14) The Judge's finding (JD 6:21-23; 20:15-17) that the video evidence does not support Blanchard's account that, while the vehicle was moving, he jumped onto the hood to avoid being run over and/or swept under the Tahoe.
- 15) The Judge's finding (JD 6:23-24) that Blanchard jumped onto the hood when the vehicle paused.
- 16) The Judge's finding (JD 6:24-25) that when Blanchard jumped onto the hood his picket sign twice made contact with the windshield to the extent that the Judge fails to find that the contact was inadvertent.
- 17) The Judge's finding (JD 6:25-26) that Blanchard ultimately admitted this version of the events in his testimony.
- 18) The Judge's finding (JD 6:26 n.22) that the windshield of the Tahoe shattered at the time that Blanchard's picket sign made contact with the windshield.
- 19) The Judge's finding (JD 6:28) that several picketers were "swarming" the Tahoe.
- 20) The Judge's finding (JD 6:32-33) that Procurement Manager Mendenhall confirmed "this version" of the events underlying the entire incident involving Blanchard and the Tahoe.
- 21) The Judge's finding (JD 7:4) that Mendenhall described the scene as pandemonium.
- 22) The Judge's finding (JD 7:13-15) that, in the aftermath of the incident involving Blanchard and the Tahoe, Respondent closed off the contractor's exit for 10 to 15 minutes and redirected traffic out of the Mill to restore order.
- 23) The Judge's repeated findings (JD 7:16-17, 7:27-28, 11:4-6, 13:21-22, 19:18-19, 19:31-32, 19:36-37, 19:41-42, 19:44 – 20:1, 20:4-5, 20:7-8, 20:17-18, 20:25-28, 20:38-29, 21:4-7) regarding the subjective impact of the picketers' conduct on others and the picketers' own intentions underlying their conduct, and her reliance on those improper findings.
- 24) The Judge's finding based on hearsay (JD 7:15-17) that Respondent bused several employees and contractors into the Mill because they were afraid to take their vehicles across the picket line.
- 25) The Judge's inappropriate use of credibility regarding Mendenhall's testimony regarding the incident involving Blanchard and the Tahoe (JD 7:19-23) where the video constitutes best evidence fully and completely capturing the entire incident at issue.
- 26) The Judge's inappropriate use of credibility in finding (JD 7:25) that Blanchard's version of the events involving him and the Tahoe was less than fully credible where the video constitutes best evidence fully and completely capturing the entire incident at issue and supports Blanchard's account.

- 27) The Judge's finding (JD 7:25-26) that it was one of the picketers who said "there's another one" and her failure to find that the video evidence also depicts others angrily saying, "hey, hey," immediately after the Tahoe strikes Blanchard in the legs.
- 28) The Judge's conclusion (JD 7:25-28) that the statement "there's another one" reflects the intention of Blanchard and the other picketers to swarm the vehicle and block its egress from the Mill.
- 29) The Judge's inappropriate use of credibility in finding (JD 7:28-30) that Mendenhall testified that, during the strike, he saw picketers blocking and/or swarming other contractors' vehicles to the extent that it is irrelevant and directly contravenes the Judge's own order directing that she will not consider the testimony involving events that do not pertain to Blanchard or the other three alleged discriminatees.
- 30) The Judge's inappropriate use of credibility in finding (JD 7:30) that Mendenhall's testimony was credible to the extent that it was irrelevant and unnecessary, and directly contravenes the Judge's own order directing that she will not consider the testimony involving events that do not pertain to Blanchard or the other three alleged discriminatees.
- 31) The Judge's finding (JD 7:32-39) that Blanchard gave inconsistent testimony regarding the number of times that his picket sign hit the Tahoe to the extent that the Judge fails to distinguish between Blanchard intentionally hitting the Tahoe with his picket sign and his picket sign making inadvertent contact with the Tahoe.
- 32) The Judge's finding (JD 7:39) that the video evidence belies Blanchard's many, different versions of the incident.
- 33) The Judge's finding (JD 7:40) that Blanchard's testimony was unreliable.
- 34) The Judge's finding (JD 8:3-4) that Blanchard's explanations fail to excuse his behavior in "swarming" and "blocking" the Tahoe's egress.
- 35) The Judge's finding (JD 8:4-5) that the evidence shows that Blanchard and the picketers first "swarmed" and "blocked" the vehicle and her failure to find that the evidence shows that Blanchard and the picketers were first engaged in lawful patrolling when the Tahoe approached and then struck Blanchard in the legs outside of Respondent's property.
- 36) The Judge's finding (JD 8:5-6) that it was Blanchard's and the other picketers' swarming and blocking that caused the Tahoe to push his way through the crowd to the extent that the Judge fails to find that it was the Tahoe driver's reckless driving that caused him to run over Blanchard and through the other picketers and that the Tahoe driver was issued a criminal citation for driving with a suspended license during the incident.
- 37) The Judge's finding (JD 8:6) that Blanchard knew his conduct was prohibited.
- 38) The Judge's finding (JD 8:8-9) that Blanchard and several other picketers "walked over to" the Tahoe.
- 39) The Judge's finding (JD 8:8-9) that Blanchard and several other picketers "swarmed" and "blocked" the vehicle's egress.

- 40) The Judge's finding (JD 8:9-10) that the Tahoe stopped at Respondent's property line to the extent that the video evidence shows that the Tahoe never stopped before crossing over Respondent's property line.
- 41) The Judge's finding (JD 8:9-10) that Blanchard jumped onto the hood of the Tahoe while it was stopped.
- 42) The Judge's finding (JD 8:10-11) that Blanchard's picket sign struck the Tahoe's windshield when he jumped onto the hood to the extent that the Judge's fails to find that any contact between the picket sign and the Tahoe was inadvertent.
- 43) The Judge's finding (JD 8:11-12) that the Tahoe sped up when there was an opening in the crowd to the extent that the video evidence shows that the opening occurred only when the Tahoe sped up and drove directly into the picketers throwing Blanchard onto the hood and pushing the other picketers to the side.
- 44) The Judge's finding (JD 8:19-29) regarding what the TRO mandated to the extent that she fails to find that the TRO also mandated that Respondent post notices at its gates indicating a maximum speed of 10 miles per hours for vehicles at the entrance and exit gates.
- 45) The Judge's finding (JD 8:39-40) that it was "against [the] backdrop" of the injunction that the September 4 Gardner truck incident involving Bouchard, Elben, and Froberg occurred, to the extent that the hearing in which the injunction was sought occurred on the very same date of the incident, September 4, and there was no evidence to support that Bouchard, Elben, or Froberg had knowledge of it.
- 46) The Judge's finding (JD 9:8-10) that Bouchard, Elben, and Froberg were aware of the contents of the TRO, the Union's picketing rules, and the prohibitions on blocking vehicles/traffic.
- 47) The Judge's finding (JD 9:29) that Bouchard and Froberg stood "in the middle of Fibre Way" during the Gardner truck incident.
- 48) The Judge's finding (JD 9:14-17) that trucks also have the right to utilize the public right-of-way to give them additional latitude in turning left out of the exit gate onto Fibre Way.
- 49) The Judge's finding (JD 9:21-22) that in order to leave the Mill out of the employee(/main) exit gate, Cutler had to make a wide left-hand turn out of the gate onto one of two lanes on Fibre Way.
- 50) The Judge's finding (JD 9:22-24) that on September 4, Cutler was faced with a small area in which to make a tight left turn to exit the Mill, and her failure to find that this area was no smaller than usual and no picketers on either side of the two-lane county road ever crossed inside the fog lines of the road.
- 51) The Judge's finding (JD 9:29-31) that the positioning of picketers outside of the fog lines of Fibre Way created a "choke hold" giving the Gardner truck a very tight turn radius with which to navigate the left turn out of the exit gate onto Fibre Way.
- 52) The Judge's finding (JD 9:31-33) that if Cutler pulled out onto the right lane of Fibre Way, she would hit the row of parked cars and/or picketers standing in front of them outside the fog lines of the road.

- 53) The Judge's finding (JD 9:33-35) that if Cutler swung the truck onto Fibre Way too quickly, the front of the rig would hit Bouchard and Froberg who stood in the public right-of-way outside the fog lines of the road.
- 54) The Judge's finding (JD 9:37-38) that as Cutler pulled out of the exit gate onto Fibre Way, the truck could not complete its left turn because of Bouchard and Froberg's location in the right-of-way outside the fog lines of the road.
- 55) The Judge's finding (JD 9 n.31) that the Gardner truck got stuck in the turn.
- 56) The Judge's finding (JD 9 n.31) that Froberg stood "in the middle of Fibre Way" during the Gardner truck incident.
- 57) The Judge's finding (JD 10:1) that Cutler saw she could not clear the left turn.
- 58) The Judge's finding (JD 10:4-5) that Mast did not believe Cutler could safely reverse the truck to renegotiate the turn.
- 59) The Judge's finding (JD 10:8-11) that Respondent's Main Gate Operator Harger asked Bouchard, Froberg, and Elben to move.
- 60) The Judge's finding (JD 10:11-13) that the picketers determined not to engage with Harger.
- 61) The Judge's finding (JD 10:14) that Bouchard, Elben, and/or Froberg refused to move.
- 62) The Judge's finding (JD 10:25) that, although the responding Sheriff's deputy actually carefully used the words, "[y]ou can't block a vehicle," according to the Judge, the deputy really "mean[t] "the Gardner truck."
- 63) The Judge's finding (JD 10:28) that the responding Sheriff's deputies gave Bouchard, Elben, and/or Froberg a "directive" to move.
- 64) The Judge's finding (JD 10:36) that Bouchard, Elben, and Froberg's movement back a few feet in response to a favor request by a responding Sheriff's deputy allowed the truck to complete its turn.
- 65) The Judge's conclusion (JD 10:39) that this situation constituted a "stand-off."
- 66) The Judge's finding (JD 11:1-4) about the exact number of tractor-trailers and trucks that had to be re-routed during the Gardner truck incident.
- 67) The Judge's finding based on hearsay (JD 11:4-6) that, according to Respondent's agent Heidi Mast, several Gardner truck drivers had told Mast they were afraid to exit the Mill during the strike because they were fearful of their safety and/or that they would encounter a similar blocking situation by the Union.
- 68) The Judge's finding (JD 11:9-11) that the waste truck exited out of the main gate "in the exact same fashion as the Gardner tractor trailer."

- 69) The Judge's finding (JD 11:12) that Bouchard and Froberg stood "in the middle of Fibre Way" when the waste truck exited past them.
- 70) The Judge's inappropriate use of credibility in her findings (JD 11:18-12:31, 17:37-18:6) as to what occurred during the Gardner truck incident, where the video constitutes best evidence fully and completely capturing the entire incident at issue.
- 71) The Judge's finding of and explicit reliance on (JD 11:22-24) Respondent's agent Mast's "trucking expertise."
- 72) The Judge's finding (JD 11:24-25) that "because Mast was not an employee of Respondent at the time of the incident, her testimony lacked bias or prejudice."
- 73) The Judge's finding (JD 11:37-38) that "Bouchard, Elben, and Froberg insisted that they believed they had the right to stand their ground in the right-of-way even if they blocked a vehicle [sic] ingress/egress."
- 74) The Judge's finding (JD 11:39-40) that Bouchard, Elben, and Froberg knew the Union's picketing rules and the TRO prohibited them from blocking traffic.
- 75) The Judge's finding (JD 11:40-12:1) that Bouchard, Elben, and Froberg "provided no cogent explanation [on the witness stand] for their 'stand their ground' belief."
- 76) The Judge's finding (JD 12:12) that not all of the trucks that had successfully navigated around picketers in the right-of-way during the previous seven days of the strike before the Gardner truck incident were as large as the Gardner truck.
- 77) The Judge's finding (JD 12:13-14) that many of trucks had a wider turn radius than the Gardner truck since there were no cars or picketers located outside the far fog line of Fibre Way.
- 78) The Judge's finding (JD 12:25-27) that Bouchard, Elben, and Froberg were evasive and/or non-responsive when asked whether the Gardner truck had a right to cut through the right-of-way when turning out of the exit.
- 79) The Judge's finding (JD 12:27-30) that Bouchard had never reported his belief that the Gardner truck driver intentionally "blew the incident out of proportion" at any time prior to the hearing, and her failure to find that he had stated that he felt the driver "intentionally cut the corner too short in an attempt to get [the picketers] off the picket line" and "to blow things out of proportion" in the written statement he provided to Respondent during its investigation into his alleged misconduct. (JD 15:32-35).
- 80) The Judge's finding (JD 12:29-30) that Bouchard's Board affidavit or *Jencks* statement does not mention his opinion that the Gardner truck driver blew the incident out of proportion, when Bouchard's affidavit is not a part of the record evidence available for the Judge to consult or rely upon.
- 81) The Judge's finding (JD 12:33-36) that when the Gardner truck exited the Mill, Cutler had a very limited turn radius onto Fibre Way, since picketers stood outside the fog lines on either side of the two-lane main county road.
- 82) The Judge's finding (JD 12:36-37) that Cutler attempted to navigate the turn, but could not.

- 83) The Judge's finding (JD 12:37-38) that Cutler stopped the truck when it was clear she would hit the three men standing outside the fog lines of the road, in the public right-of-way.
- 84) The Judge's finding (JD 12:38-39) that Bouchard, Elben, and Froberg had moved aside for other trucks (plural), despite that the only evidence of such in the record involves a single waste truck.
- 85) The Judge's finding (JD 12:39) that Bouchard, Elben, and Froberg stood "in the middle of Fibre Way" during the Gardner truck incident.
- 86) The Judge's finding (JD 12:40) that Bouchard, Elben, and Froberg blocked Cutler's egress.
- 87) The Judge's finding (JD 12:40-41) that during the incident, the Gardner truck was stopped in the middle of Fibre Way, blocking traffic.
- 88) The Judge's finding (JD 12:41-42) that Harger had asked Bouchard, Elben, and Froberg to move.
- 89) The Judge's finding (JD 12:42) that Bouchard, Elben, and Froberg had refused a request by Harger to move.
- 90) The Judge's finding (JD 12:43-44) that none of Respondent's employees or other drivers or contractors could access the Mill or Fibre Way during the standoff, and her failure to find that, in addition to this main/employee exit gate, Respondent also had a main/employee entrance gate and two other sets of entrances and exits through which it could – and did – route traffic.
- 91) The Judge's finding (JD 12 n.42) that "Because it was a public right-of-way, trucks also had a right to use the public right-of-way," and her failure to find that unrebutted testimony establishes that the Cowlitz County police confirmed prior to the Gardner truck incident both that the picketers' location in the right-of-way was an appropriate location for picketing, and that it was a right-of-way for pedestrians, not vehicle traffic.
- 92) The Judge's finding (JD 13:1-2) that a responding Sheriff's deputy gave Bouchard, Elben, and Froberg an "instruction" to move.
- 93) The Judge's finding (JD 13:1-2) that Bouchard, Elben, and Froberg refused the deputy's instruction to move.
- 94) The Judge's findings (JD 13:9-12) that Smith had previously worked as a Cowlitz County Sheriff's deputy for 35 years and was familiar with the Washington State criminal statutes, particularly those involving disorderly conduct and malicious mischief.
- 95) The Judge's finding (JD 13:18-19) that Security Officers Shilov and Farrant inspected and confirmed the Delta Fire truck's damage.
- 96) The Judge's finding (JD 13:19-20) that Smith confirmed with the owner that the vehicle had been damaged by Blanchard's kick.
- 97) The Judge's finding (JD 13:26-28) that the Tahoe's windshield was broken at or about the time that Blanchard jumped onto the hood of the truck and struck it with his picket sign.

- 98) The Judge's finding (JD 13:36-38) that Blanchard expressed no remorse for his solitary kick to the Delta Fire truck and her failure to find that take into account the reckless driving of the Tahoe driver, who was invited by Respondent onto its premises, and ran over Blanchard, injuring him.
- 99) The Judge's finding (JD 13:26-28) that Blanchard did not express any reasonable justification for his solitary kick to the Delta Fire truck.
- 100) The Judge's finding (JD 13:24-26) that Smith concluded that Blanchard's conduct in kicking the truck constituted criminal mischief.
- 101) The Judge's conclusion (JD 14:25 n.51) that she was taking judicial notice of the Washington State statute regarding criminal mischief.
- 102) The Judge's finding (JD 14:29-30) that Smith believed that Blanchard's conduct regarding the Tahoe constituted disorderly conduct.
- 103) The Judge's conclusion (JD 14:30 n.53) that she was taking judicial notice of the Washington State statute regarding disorderly conduct.
- 104) The Judge's inappropriate use of credibility in finding (JD 15:13-16) a failure by Froberg to mention at the hearing that a Sheriff's deputy told him he could not stand in the right-of-way and block a vehicle, where the video constitutes best evidence of that incident.
- 105) The Judge's inappropriate use of credibility in finding (JD 15:21-30) that the photograph attached to Elben's written statement provided to Respondent during its investigation was doctored, and her failure to find that the unrebutted testimony established the source of the picture was not Elben and the fact that the picture had nothing to do with Respondent's decision to terminate Elben's employment.
- 106) The Judge's finding (JD 15:37-16:1) that due to the size and length of the Gardner truck, Cutler had a very restricted turn radius in which to negotiate the left turn with Bouchard, Elben, and Froberg standing in the right-of-way outside one fog line of the two-lane road, and other picketers outside the fog line on the other side of the road, and her finding (JD 15:37) that Bouchard, Elben, and Froberg's failure to take into account these alleged facts rendered their testimony incredible.
- 107) The Judge's finding (JD 16:11-13) that Smith determined from video footage that a Sheriff's deputy had informed Bouchard, Elben, and Froberg that they had no right to stand in the right-of-way and block the Gardner truck, and her failure to find that the objective video evidence available to Smith at the time of Respondent's investigation made such a conclusion impossible.
- 108) The Judge's finding (JD 16:13-16) that Smith's investigation confirmed that those present at the scene reasonably believed that the Gardner truck could not have safely reversed without hitting Bouchard, Elben, and Froberg, and her failure to find that Respondent's own contracted Security Officer Shilov had asked the Gardner truck driver to attempt to back up the truck, but she had refused, and the fact that Shilov had detailed this in the incident report he drafted, which Smith reviewed during the investigation.
- 109) The Judge's finding (JD 16:19-21) that Smith concluded that Bouchard's, Elben's, and Froberg's conduct (blocking a vehicle) violated the TRO and constituted criminal disorderly conduct, and her failure to find that there was no substantive evidence to support this because such conclusion was

- based on non-substantive affirmative responses by Smith to leading questions by Respondent's counsel, over the repeated and standing objections of the General Counsel.
- 110) The Judge's finding (JD 16:42-44) that Gaston determined that Froberg refused to move after being addressed by a Sheriff's deputy.
 - 111) The Judge's inappropriate use of credibility in finding (JD 16:42-17:1) that Gaston determined that Froberg failed to admit in his written statement that he had refused to move after being addressed by a Sheriff's deputy, and her failure to find that the objective video evidence establishes that Froberg never refused a direction by law enforcement to move.
 - 112) The Judge's finding (JD 17:1-2) that Gaston recommended that Blanchard be terminated, and the Judge's failure to find that Gaston admitted that Respondent would not have terminated Blanchard solely for kicking the Delta Fire truck.
 - 113) The Judge's finding (JD 17:21) that Smith's testimony comported with the documentary evidence.
 - 114) The Judge's finding (JD 17:25-26) that Gaston's testimony was supported by the documentary evidence.
 - 115) The Judge's finding (JD 17:30) that the documentary evidence corroborated Duncan's testimony.
 - 116) The Judge's finding (JD 19:12-13) that Blanchard's jumping on the hood of the Tahoe caused damage to the truck's windshield.
 - 117) The Judge's finding (JD 19:17-19) that video and photographic evidence demonstrates that Blanchard and others intentionally "swarmed" the Tahoe and "blocked" its egress from the Mill.
 - 118) The Judge's finding (JD 19:19-20) that, while the Tahoe was stopped, Blanchard jumped on the hood of the truck.
 - 119) The Judge's finding (JD 19:20-21) that Blanchard's picket sign hit the truck causing damage to the windshield.
 - 120) The Judge's finding (JD 19:22-23) that Respondent discharged Blanchard for engaging in "said misconduct."
 - 121) The Judge's finding (JD 19:25-28) that General Counsel cannot meet its burden of showing that Blanchard's conduct towards the Delta Fire truck was not sufficiently egregious to warrant his discharge.
 - 122) The Judge's finding (JD 19:28-30) that Blanchard's solitary kick to the Delta Fire truck was for no legitimate reason and was sufficient to warrant denial of reinstatement.
 - 123) The Judge's conclusion (JD 19:39-40) that Blanchard's conduct regarding the Tahoe was unprotected.
 - 124) The Judge's conclusion (JD 19:42 - 20:1) that an alleged picketer's statement "there's another one" as the Tahoe left the Mill site "proved" that Blanchard and his "cohorts" intended to intimidate the contractor.

- 125) The Judge's finding (JD 20:1-2) that Blanchard admitted that his actions were prohibited by the Union's picketing rules.
- 126) The Judge's finding (JD 20:1-3) that Blanchard admitted that his actions were prohibited by the Cowlitz County Court's TRO.
- 127) The Judge's finding (JD 20:3-5) that Blanchard "surrounded" and "slamm[ed]" his picket sign on/near the truck.
- 128) The Judge's finding (JD 20:8-9) that the Board has found Blanchard's conduct towards the Tahoe to be inherently threatening, coercive, intimidating, and unprotected under the Act.
- 129) The Judge's citation (JD 20:9 n. 74) to three Board decisions as legal support for her conclusion that Blanchard's conduct towards the Tahoe was inherently threatening, coercive, intimidating, and unprotected under the Act.
- 130) The Judge's finding (JD 20:11) that she carefully reviewed the video evidence frame by frame.
- 131) The Judge's finding (JD 20:12-13) that Blanchard's act in jumping on the Tahoe's hood and subsequent damage to the truck's windshield was unprotected.
- 132) The Judge's finding (JD 20:17-18) that Blanchard jumped onto the hood of the truck in order to "gain a tactical advantage."
- 133) The Judge's finding (JD 20:19-20) that the Tahoe driver's suspended license and reckless driving are not relevant to the decision to discharge Blanchard.
- 134) The Judge's citation (JD 20:22 n.75) to two Board decisions as legal support for her conclusion that the Tahoe driver's suspended license and reckless driving are not relevant to the decision to discharge Blanchard.
- 135) The Judge's finding (JD 20:22-25) that Respondent's decision to discharge Blanchard was based on its investigation that revealed that Blanchard and his fellow strikers "swarmed" and "blocked" the Tahoe's egress, Blanchard climbed onto the hood of the Tahoe with picket sign in hand, and the contractor's windshield was damaged.
- 136) The Judge's finding (JD 20:28-29) that Blanchard's strike misconduct was sufficiently egregious and coercive that it warranted his termination.
- 137) The Judge's conclusion (JD 20:33-34) that the actions of Bouchard, Elben, and Froberg toward the Gardner truck were unprotected.
- 138) The Judge's finding (JD 20:34-36) that Bouchard, Elben, and Froberg blocked the Gardner truck from exiting the Mill.
- 139) The Judge's finding (JD 20:36-38) that Bouchard, Elben, and Froberg's actions toward the Gardner truck occurred because they believed Gardner truck driver Cutler hurled insults and profanities at picketers during the strike.
- 140) The Judge's finding (JD 20:38-39) that Bouchard, Elben, and Froberg intended to retaliate against Cutler and intimidate her from returning to the Mill.

- 141) The Judge's finding (JD 20:39-21:1) that Cutler did not hurl profanities toward fellow picketers.
- 142) The Judge's finding (JD 20:39-21:2) that if Cutler had hurled profanities toward fellow picketers, such would not have justified Bouchard's, Elben's, and Froberg's actions toward to the Gardner truck.
- 143) The Judge's inference (JD 21 n.76) that a one-time peaceful blocking incident analogous to the Gardner truck incident forfeits the protection of the Act under *Clear Pine Mouldings*.
- 144) The Judge's finding (JD 21:4-6) that Bouchard's, Elben's, and Froberg's conduct had the effect of intimidating/discouraging other employees and contractors from coming to the Mill during the strike.
- 145) The Judge's finding (JD 21:4-7) based on hearsay that several employees and contractors were afraid to cross the picket line following the Gardner truck incident.
- 146) The Judge's finding (JD 21:7-9) that Respondent was required to redirect numerous vehicles away from Fibre Way for 20 minutes during the Gardner truck incident.
- 147) The Judge's finding (JD 21:8) that the main exit gate onto Fibre Way where the Gardner truck incident occurred was "the only access to the Mill," and her failure to find that there is a main entrance gate and two other sets of entrances and exits through which Respondent could and did route traffic.
- 148) The Judge's finding (JD 21:10-11) that Bouchard, Elben, and Froberg were aware that the Union's picket line rules and the TRO prohibited them from blocking the Gardner truck.
- 149) The Judge's finding (JD 21:11-13) that Bouchard, Elben, and Froberg refused to move to allow the Gardner truck to pass after being addressed by a Sheriff's deputy.
- 150) The Judge's finding (JD 21:18) that Bouchard, Elben, and Froberg stood "in the middle of Fibre Way" during the Gardner truck incident.
- 151) The Judge's finding (JD 21:18) that Bouchard, Elben, and Froberg blocked Cutler from leaving the Mill.
- 152) The Judge's finding (JD 21:19-20) that a deputy "admonished" Bouchard, Elben, and Froberg over their actions toward the Gardner truck.
- 153) The Judge's conclusion (JD 21:22-23) that Respondent terminated Bouchard, Elben, and Froberg because they unlawfully blocked the Gardner truck from exiting the Mill.
- 154) The Judge's finding (JD 21:23-24) that Bouchard, Elben, and Froberg knew their conduct was prohibited.
- 155) The Judge's finding (JD 21:24) that Bouchard, Elben, and Froberg were told their conduct was prohibited on multiple occasions.
- 156) The Judge's finding (JD 21:24-25) that Bouchard, Elben, and Froberg refused to cease and desist from their conduct toward the Gardner truck.
- 157) The Judge's conclusion (JD 21:25) that Bouchard, Elben, and Froberg's actions toward the Gardner truck were "inherently coercive and intimidating."

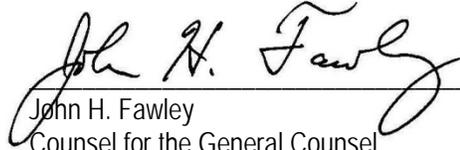
- 158) The Judge's conclusion (JD 21:26) that Bouchard's, Elben's, and Froberg's actions toward the Gardner truck were "unprotected."
- 159) The Judge's citation to two cases (JD 21 n.77) as legal support for her conclusion that Bouchard, Elben, and Froberg's conduct toward the Gardner truck was "inherently coercive and intimidating, and therefore, unprotected under the Act."
- 160) The Judge's conclusion (JD 21:29-30) that Respondent did not violate §§ 8(a)(1) or (3) of the Act.
- 161) The Judge's recommendation (JD 21:30) that the complaint be dismissed.

DATED at Seattle, Washington, this 5th day of January, 2017.

Respectfully submitted,



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