

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Richfield Hospitality as Managing Agent for Kahler
Hotels, LLC

Respondent

and

UNITE HERE Local 21

Charging Party

Cases 18-CA-176369

CROSS-EXCEPTIONS AND BRIEF IN SUPPORT OF CROSS-EXCEPTIONS ON
BEHALF OF THE GENERAL COUNSEL

Submitted by:

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INTRODUCTION

In response to the exceptions being filed by Richfield Hospitality, Inc. as Managing Agent for Kahler Hotels, LLC (Respondent) in the above-referenced case, Counsel for the General Counsel (Counsel) files the following limited cross-exceptions. While Administrative Law Judge (ALJ) Locke correctly concluded that Respondent engaged in overall surface bargaining and unlawfully implemented portions of its final offer, there are two substantive issues that warrant reconsideration by the National Labor Relations Board. These issues are: 1) ALJ Locke's inconsistent reliance on earlier factual findings made by ALJ Steckler in the first case against Respondent; and 2) ALJ Locke's failure to find that Respondent's other unfair labor practices precluded a valid impasse, even assuming Respondent did not engage in overall surface bargaining. In addition to these two broader cross-exceptions, Counsel also cross-excepts to numerous, apparently inadvertent, technical errors in ALJ Locke's underlying decision. These cross-exceptions, and the arguments supporting these cross-exceptions, will be addressed in the order that these issues appear in ALJ Locke's decision.

Cross-Exception 1: ALJ Locke Misspelled Counsel's Name as Tyler J. "Liese" (ALJD¹ at 1, Heading)

Argument: Counsel avers, as supported by record testimony (Tr. at 7),² that his name is Tyler J. ***Wiese***, and requests that the decision be corrected to reflect this fact.

¹ "ALJD" references are to the underlying decision of ALJ Locke in Case 18-CA-176369. References to the ALJD in Case 18-CA-151245 will be referenced as "Steckler ALJD."

² "Tr." references are to the transcript of the unfair labor practice hearing; "GCX" refers to exhibits entered at the hearing by the General Counsel; and "RX" refers to exhibits entered by Respondent.

Cross-Exception 2: ALJ Locke Incorrectly Found that the Initial Charge in Case 18-CA-176369 Was Filed on May 27, 2016 (ALJD at 1, ¶2)

Argument: As indicated by GCX 1(a), the initial charge in this matter was filed on May 17, 2016.

Cross-Exception 3: ALJ Locke Incorrectly Found Upon Returning to the Table in February 2016 that Respondent's Wage Proposal Was Comprised Only of a Spreadsheet, In Contradiction to ALJ Steckler's Decision in Case 18-CA-151245 (ALJD at 33:11–36:6 and 55:26–30)

Argument: ALJ Locke correctly determined that Respondent engaged in surface bargaining in 2016 due to a variety of factors, including a failure to meet and bargain over the details of the wage proposal, insisting that the Union make counterproposals as a precondition to engage in further bargaining, and Respondent's haste in unilaterally implementing its wage proposal. (ALJD at 38, 40–41, 46.) Further, ALJ Locke properly found (in agreement with Counsel) that Respondent's bargaining over wages, from February 2016 onward, served as evidence of its overall bad-faith at the bargaining table. (ALJD at 41–47.) Nonetheless, in ALJ Locke's analysis of the content of Respondent's wage proposal, he made a small, but important, error that is the subject of this Cross-Exception.

The parties' bargaining in this matter is now the subject of two administrative law judges' decisions: ALJ Steckler's decision in Case 18-CA-151245, and ALJ Locke's decision in Case 18-CA-176369. One of the issues presented before ALJ Steckler in Case 18-CA-151245 was whether Respondent had engaged in unlawful bargaining over the subject of wages, specifically by refusing to maintain a comprehensible position on this subject. (Steckler ALJD at 17:46–21:22.) In that case, the parties presented extensive evidence regarding what occurred at the bargaining table from January 2015 to

the date of the first hearing on December 15, 2015. Judge Steckler made detailed factual findings regarding this bargaining (Steckler ALJD at 4:35–14:46). Based on these detailed factual findings, ALJ Steckler concluded that, as of the December 2015 hearing, “[t]he bargaining history demonstrates that Richfield violated Section 8(a)(5) in its pay proposals.” (Steckler ALJD at 21:21–22.) In turn, her findings and conclusions *define* what occurred during the parties’ bargaining over wages between January 2015 and December 2015.

As found by ALJ Steckler, Respondent had unlawfully bargained in bad faith, as of the December 2015 hearing, by presenting obscure wage proposals. These wage proposals, including Respondent’s March 2015 last, best, and final offer, consisted of a wage spreadsheet *and* thousands of pages of pie charts, and suffered from a variety of infirmities, including the fact that they were inconsistent and inaccurate. (Steckler ALJD at 20–21:22.) Respondent’s bargaining *after* this first hearing, which is the subject of the litigation before ALJ Locke, did nothing to clarify or rectify this unlawful obscurity. This is conclusively demonstrated by the fact that Respondent continually insisted in 2016 that its wage proposal *had not changed since its March 2015* last, best, and final offer (LBF)—an offer that was considered by ALJ Steckler as part of her findings. (*See, e.g.,* GCX 3 at 5; GCX 6 at 1–2 (Respondent’s email to Union stating “Our wage proposal hasn’t changed”); GCX 7 at 2 (Respondent’s email to Union stating “neither side has budged on the wage issues since March 2015”); GCX 11 at 2 (Respondent’s email to Union stating “the company remained nonetheless firm on its wage and other proposals made nearly one year prior (in March 2015).”); GCX 8 at 13–14; GCX 11 at 2; GCX 18 at 1 (Respondent’s attorneys letter to Union stating “the company has not

budgeted on any of its wage proposals since making its last best and final offer, on March 24, 2015.”); GCX 23 at 2; GCX 24 at 1; GCX 26 at 1; RX 6 at 1.) Contrary to ALJ Locke, Respondent’s bargaining over wages in 2016 did nothing to cure the infirmities found by ALJ Steckler. Respondent presented no new proposals regarding wages, or otherwise communicated to the Union that the pie charts were off the table and had been definitively replaced by the wage spreadsheet.³ In fact, Respondent *conditioned* bargaining at the parties’ June 7 session (after ALJ Steckler’s decision issued and post-implementation) on the parties *not* discussing wages. (Tr. 72, 186, 200.) Further, at the second hearing, both the Union’s *and* Respondent’s negotiators testified that they understood the pie charts to *still* be part of Respondent’s wage package.⁴ (Tr. 229–230, 281–83.) Thus, Respondent’s proposal in 2016 still necessarily included both the confusing, inaccurate and voluminous pie charts, *in addition to the spreadsheet*, as found by ALJ Steckler.

ALJ Locke, while purporting to adopt ALJ Steckler’s findings (ALJD at 49:22–23), concluded that in February 2016, “the spreadsheet, not the pie charts, memorialized the Respondent’s proposal and the meaning of this document speaks with crisp clarity.” (ALJD at 35:14–16.) This finding is in explicit conflict with ALJ Steckler’s decision, where she found a violation in December 2015 because Respondent, *through its use of spreadsheets and the pie charts*, “presented confusing pay proposals for currently employed employees” in its March 2015 LBF. (Steckler ALJD at 21:4–5.) As discussed

³ Indeed, the only additional information regarding its wage proposal that Respondent presented during the parties bargaining in 2016 *occurred after Respondent had already implemented its wage proposal on May 16, 2016*. (See GCX 12; GCX 13; GCX 14.)

⁴ Respondent’s Exceptions to the Board confirm this fact, as they state that its wage offer still consists of both the spreadsheet and thousands of pages of pie charts. (R. Br. at 2–3.)

above, there is simply no evidence to support the conclusion that Respondent, in any way, modified or clarified its March 2015 LBF during the parties' bargaining in 2016. ALJ Locke's finding, therefore, that Respondent had replaced its unlawfully obscure wage proposal with a wage proposal of "crisp clarity" is a fiction, as there is no evidence to support this conclusion.

That ALJ Locke chose to discredit Union negotiator Martin Goff's testimony regarding his inability to understand Respondent's wage proposal in 2016 is of no moment. ALJ Locke did this because "[o]n cross-examination, Goff demonstrated that he fully understood the information on the spreadsheet." (ALJD at 34:38–39.) ALJ Locke is apparently referring to testimony by Goff in which Respondent's counsel went through the headings and certain rows of a wage spreadsheet and asked Goff if he could read the words and numbers therein. (Tr. 102–05, 117–21.) Counsel does not dispute that Goff was (and remains) able to read numbers on a spreadsheet, as demonstrated by Respondent's belabored cross-examination.⁵ If the evidence supported ALJ Locke's conclusion that the wage spreadsheet actually represented Respondent's wage proposal, then (as with the vast majority of credibility resolutions) there would be no grounds to dispute this finding. However, as demonstrated above, the finding that the wage spreadsheet clearly represented Respondent's wage proposal during bargaining in 2016 and otherwise remedied Respondent's bad faith is in error, as there is simply no evidence

⁵ Counsel notes further that while ALJ Locke allowed Respondent wide latitude to essentially relitigate the issue of its bargaining over wages in 2015, he sharply curtailed Counsel's ability to do the same, including by not allowing the introduction of the pie charts that were in evidence in the first matter. (Tr, 250; GCX 29 (rejected).) As will be discussed below in Cross-Exception 5, ALJ Locke's decision not to apply collateral estoppel to ALJ Steckler's findings regarding the parties' bargaining over wages in 2015 led to many of the issues discussed above.

to support this point. The question is not whether Goff could understand numbers on a spreadsheet, but whether the evidence demonstrates that the spreadsheet somehow displaced the confusing milieu of Respondent's prior wage proposals that were the subject of a bad-faith finding by ALJ Steckler. The evidence, as discussed above, clearly demonstrates that it did not. As such, ALJ Locke's credibility determination as to Goff's understanding of Respondent's wage proposal is essentially irrelevant, as it is based on a mistake as to what actually compromised Respondent's wage proposal.

ALJ Locke commits further error in his speculative discussion of how the Union's understanding of the wage proposal changed between the December 2015 hearing in the first case and the parties' first bargaining session in the second case in February 2016. In this discussion, ALJ Locke compares Respondent's wage proposal, as encompassed in its March 2015 LBF, to other complex subjects, such as "calculus, or a foreign language, or the Internal Revenue Code," and thereafter claims that the Union somehow discerned the meaning of Respondent's obscure wage proposal over time. (ALJD at 34:29–30.) This finding, as with his other findings on this subject, is in error. The issue with Respondent's wage proposal is not its underlying complexity. Although the proposal—which appears to call for individualized wage rates for each employee for each year of the contract—is indeed complex, Respondent's bargaining over wages in 2015 was found unlawful by ALJ Steckler because it was *unintelligible and contradictory*. (Steckler ALJD at 21:21–22.) The pie charts, along with the wage spreadsheet, are *incapable of being understood*, and as such were properly found to be ALJ Steckler to be made in bad faith. Rather than a complex, yet understandable, subject like calculus, Respondent's

wage bargaining is more akin to the paradox of Schrödinger's cat.⁶ Like the cat in Schrödinger's box, Respondent's wage proposal remains in a state of uncertainty, as the various spreadsheets, pie charts, and Respondent's representations regarding wages all contradict one another. Until Respondent *defines* what its wage proposal is, it *cannot* be understood. And there is simply no evidence in the second case that Respondent ever clarified what, exactly, it was proposing regarding wages. As such, its (unchanged) wage proposal from the first case serves as evidence of bad faith in the second case.⁷ Further, ALJ Locke's conclusion that Respondent did not violate the Act when it returned to the bargaining table in February 2016 with the same wage proposal examined by Judge Steckler, is in error, as is his conclusion that the Union fully understood the proposal when bargaining resumed in 2016.

In the end, ALJ Locke properly concluded that Respondent's bargaining over wages was in bad faith and that this bad faith was strong evidence of Respondent's

⁶ The paradox of Schroedinger's cat is a hypothetical situation designed to illustrate the principle of superposition in quantum mechanics (in essence, a particle existing in multiple states at once). In this hypothetical, a cat is placed in a box with an (unpredictable) radioactive source and a poison that releases if the radioactive source emits radiation. While the box remains closed, the cat can be thought of as simultaneously being dead *and* alive, as there is no way to know which of the two states the cat occupies without opening the box and observing which state the cat is in. *See generally* "Schrödinger's Cat," *Wikipedia*, https://en.wikipedia.org/wiki/Schr%C3%B6dinger%27s_cat (July 27, 2017).

⁷ ALJ Locke points out that ALJ Steckler's decision did not require Respondent to modify or rescind its wage proposal, and therefore (contrary to the complaint) she did not "find unlawful" Respondent's wage proposal. (ALJD at 33:18–34:6.) Rather, according to ALJ Locke, ALJ Steckler's decision found that Respondent had "bargained in bad faith" over wages. (ALJD at 34:1–2.) The distinction is of little import here, because both ALJD's clearly conclude that Respondent's bargaining regarding wages was in bad faith in both 2015 and 2016. The only issue in this case is the path taken by ALJ Locke in reaching this conclusion and his failure to give deference to ALJ Steckler's conclusion regarding the substance of Respondent's wage proposal, which is the subject of the instant Cross-Exception.

overall surface bargaining. (ALJD at 38:18–20.) However, in contrast to ALJ Locke’s somewhat tortured route to this conclusion, the proper analysis regarding Respondent’s bargaining over wages is simple and straightforward. ALJ Steckler found that Respondent engaged in bad-faith bargaining regarding wages, up to the date of the December 2015 hearing. The evidence adduced in the hearing before ALJ Locke reveals that Respondent did *nothing* to clarify its wage proposal or remedy this bad-faith bargaining⁸—indeed, it doubled down by refusing to discuss its wage proposal during the parties’ bargaining in 2016 (including *after* ALJ Steckler’s decision issued). ((Tr. 72, 186, 200.) Respondent’s failure to remedy or clarify its unlawfully obscure wage proposal in 2016 is clear evidence of bad faith.⁹ *Billion Motors*, 260 NLRB 745, 756 (1982), *enforced*, 700 F.2d 454 (8th Cir. 1983).

Cross-Exception 4: ALJ Locke Failed to Find that Respondent’s Continuing Failure to Pay Wage Increases Called for Under the Expired Contract and Failure to Provide Crucial Health Insurance Information Precluded Respondent’s Unilateral Implementations of Its Offer in 2016 (ALJD at 51:31–40)

Argument: ALJ Locke chose not to pass on the theory that Respondent’s away-from-the-table unfair labor practices—namely, its failure to pay wage increases called for under the expired contract and provide critical health insurance information—precluded

⁸ Contrary to the suggestion by ALJ Locke (ALJD at 35:36–40), it is not up to Counsel or the Union to advise Respondent on how to fix its bargaining regarding wages. Instead, it is incumbent on Respondent to make a comprehensible wage proposal and engage in good faith negotiations regarding that proposal.

⁹ Somewhat surprisingly, given his initial discussion of Respondent’s wage proposal as being made in “crisp clarity” through the wage spreadsheet, ALJ Locke later goes on an extended foray into how Respondent “weaponized” these same *pie charts* as part of an overall strategy of obfuscation and surface bargaining. While Counsel respects Judge Locke’s efforts in this regard, and agrees with his overall result, Counsel believes that the appropriate way to analyze the parties’ bargaining over wages in 2016 is much simpler and more straightforward, consistent with the views expressed above.

the parties from reaching a valid impasse. (ALJD 51:31–40.) Counsel requests that the Board find that, even in the absence of surface bargaining, these violations independently precluded Respondent’s unilateral implementations in May and July 2017.

As an initial matter, ALJ Locke found that Respondent had not remedied its failure to continue paying the wage increases called for under the expired contract (ALJD at 50:16-19), nor had it provided the Union with the requested health insurance information. (ALJD at 49:39-41). The question left open by Judge Locke’s decision is whether these unremedied unfair labor practices precluded the parties from reaching a valid impasse. Under well-established Board precedent, the answer is yes.

Although not all unfair labor practices will preclude a valid impasse, the Board has held that “[g]enerally, a lawful impasse cannot be reached in the presence of unremedied unfair labor practices.” *Circuit-Wise, Inc.*, 309 NLRB 905, 918 (1992). Specifically, where the unfair labor practices are both serious and affect negotiations at the bargaining table, the parties are precluded from declaring a lawful impasse. *Noel Foods Division*, 315 NLRB 905, 911 (1994).

Respondent’s failure to pay wage increases and to provide health insurance information both qualify as unfair labor practices that preclude a valid impasse. As to wages, the Board held in *Lafayette Grinding Corp.*, 337 NLRB 832, 833 (2002), that a failure to pay wage increases moved the “baseline for negotiations to a considerably lower level” and therefore precluded a valid impasse. As to health insurance information, the Board has held in numerous cases that the failure to provide this type of information precludes a valid impasse, particularly where the parties are in dispute over health care costs. *United States Testing Co.*, 324 NLRB 854, 854, 860 (1997); *Genstar Stone*

Products Co., 317 NLRB 1293, 1293 (1995); *see also Pavilions at Forrestal*, 353 NLRB 540, 540 (2008) (two-member decision). Accordingly, the Board should find that these continuing unfair labor practices independently prevented Respondent from validly reaching impasse and implementing portions of its March 2015 LBF in May and July 2017.

Cross-Exception 5: ALJ Locke Improperly Refused to Apply Collateral Estoppel to ALJ Steckler’s Decision in Case 18-CA-151245 (ALJD at 49:17–37)

Argument: ALJ Locke failed to apply collateral estoppel to the factual findings and conclusions of law made by ALJ Steckler in Case 18-CA-151245. Although he purported to “fully rely” on these findings, the discussion above regarding Respondent’s wage proposal reveals that he did not, and that he committed further error by failing to apply collateral estoppel in this case.

The principle of collateral estoppel is well-defined in the law. Under the collateral estoppel doctrine, parties are not allowed to relitigate issues that were litigated in a previous proceeding, in the absence of newly discovered evidence. *Wynn Las Vegas*, 358 NLRB 690, 690 n.1, 692–93 and cases cited therein (2012) (*Noel Canning* decision); *Grand Rapids Press of Booth Newspapers*, 327 NLRB 393, 393 n.1, 394–95 (1998), *enforced*, 215 F.3d 1327 (6th Cir. 2000). The doctrine of collateral estoppel prevents “the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Montana v. U.S.*, 440 U.S. 147, 154 (1979). Although clearly not binding on the Board, the Administrative Law Judge’s Bench Book also endorses this practice, noting that it “advances judicial efficiency, and avoids inconsistent results and delays attendant to awaiting the Board’s review of the judge’s decision in the earlier case.” *See*

NATIONAL LABOR RELATIONS BOARD, DIVISION OF JUDGES, BENCH BOOK, § 13-300, *Reliance on Prior Findings of Another Judge* (2016).

The elements of collateral estoppel are clearly met here. The parties have not changed in the second case, and it is clear that what happened at the bargaining table in 2015, particularly the parties' bargaining regarding wages, *was fully litigated* in the first case (as demonstrated by ALJ Steckler's decision). (Steckler ALJD at 4:35–14:46, 21:21–22.) Respondent has not even attempted to point to newly discovered evidence regarding the parties' bargaining in 2015 in this proceeding—rather, it is simply seeking to recast what has already been set by the first decision.

ALJ Locke refused to apply collateral estoppel to ALJ Steckler's decision, on the basis that it was not a “final judgment” within the meaning of the collateral estoppel doctrine.” (ALJD at 55:16–17.) In support of this contention, ALJ Locke cited to *NLRB v. Yellow Freight Systems*, 930 F.2d 316 (3d Cir. 1991). This case, however, dealt with an entirely different issue—namely whether the Board was required to apply collateral estoppel to an arbitration proceeding. Further, as a circuit court case, it is not binding on the Board. By contrast, the Board appears to have endorsed the practice of applying collateral estoppel to ALJ decisions pending on appeal. For example, in *Wynn Resorts*, 358 NLRB 690, 690 n.1 (2012), the Board considered the issue of collateral estoppel in precisely the situation presented here (involving an ALJ decision on appeal), and determined that collateral estoppel applied. Counsel recognizes that *Wynn Resorts*, 358 NLRB 690 (2012), was issued by a panel that under *Noel Canning* was not properly constituted. It is the Counsel's position, however, that *Wynn Resorts* was soundly

reasoned, and Counsel therefore urges that the Board adopt the *Wynn Resorts* rationale as its own.

ALJ Locke’s failure to apply collateral estoppel to ALJ Steckler’s decision, and particularly her findings regarding Respondent’s bargaining over wages as of the date of December 2015 hearing, has led precisely to the consequences collateral estoppel is designed to prevent. Respondent was allowed to relitigate factual findings, particularly the parties’ bargaining over wages in 2015, that were made by ALJ Steckler in the first case. This led to a waste of judicial resources, as ALJ Locke and Counsel have had to spend time and effort attempting to untangle this issue for a second time, and on a different administrative record. Finally, and perhaps most importantly, the failure to apply collateral estoppel has led to inconsistent results. ALJ Steckler found that, by proffering obscure proposals and failing to adequately explain them, Respondent bargained in bad faith over wages in 2015. By now claiming Respondent’s bargaining over wages in 2016, when the underlying proposals had not changed, was conducted with “crisp clarity,” ALJ Locke has presented the Board with a contrary factual finding.¹⁰

Although the import of this is tempered by the fact that ALJ Locke correctly concluded

¹⁰ In making the decision over which of the two records to rely on in determining the parties’ bargaining in 2015, the record in Case 18-CA-151245 presents a much clearer and more comprehensive picture of what occurred at the bargaining table during this time. As is evident from that record, each party presented extensive documentary and testimonial evidence regarding the wage bargaining, and the issue was squarely presented before ALJ Steckler. Here, by contrast, ALJ Locke *precluded* Counsel from putting on evidence regarding what happened at the bargaining table in 2015—even after allowing Respondent to extensively cross-examine Union negotiator Goff regarding this issue. (*Compare* Tr. 95–152 (Respondent’s cross-examination of Goff regarding bargaining in 2015) *with* Tr. 232–49 (rejecting Counsel’s proffer of evidence regarding what occurred during bargaining in 2015).) As such, the record in the instant case regarding what happened during bargaining in 2015 in Case 18-CA-176369 is, at best, one-sided, incomplete, and misleading, and should not be relied on by the Board.

that Respondent engaged in overall surface bargaining, applying collateral estoppel to ALJ Steckler's findings of fact and conclusions of law would have resulted in a more economical record in this case and likely a clearer analysis by ALJ Locke.

Cross-Exception 6: ALJ Locke Mis-Dated ALJ Steckler's Decision as Issuing on "May 27, 3026" (ALJD at 54:32.)

Argument: This decision issued on May 27, 2016.

Cross-Exception 7: ALJ Locke Failed to Include a Rescission and Restoration Order Addressing Respondent's Unilateral Changes in His Remedy Discussion (ALJD at 56:4–58:24)

Argument: Although ALJ Locke's "Remedy" section discusses Respondent's unilateral changes as they relate to wages, he does not include Respondent's other unilateral changes that he found unlawful. (*Id.* at 54:21–25, 56:1–2.) Counsel requests that the Board include, in its remedy section, language stating that Respondent "shall, on request of the Union[], rescind all or part of the implemented "final proposal[] and bargain in good faith with the Union[] as the exclusive bargaining agent." *Anderson Enterprises*, 329 NLRB 760, 784 (1999).

Cross-Exception 8: ALJ Locke Inadvertently Failed to Include All of Respondent's Unlawful Unilateral Changes in His Conclusions of Law (ALJD 59:15–20)

Argument: ALJ Locke's Conclusions of Law, related to Respondent's unilateral changes, only discuss Respondent's wage proposal. (ALJD at 59:18–20.) However, ALJ Locke clearly found that Respondent unilaterally implemented additional portions of its LBF in May and July 2016 (ALJD 48:1–3); that the portions implemented at these times related to wages, hours, and other terms and conditions of employment (*Id.* at 48:11:15); and that Respondent's unilateral implementation was unlawful (*Id.* at 54:21–25, 56:1–2.) Respondent's unilateral changes reached beyond changes to wages, and includes topics

such as the elimination of daily overtime, limiting sick leave, and ability to employ temporary employees. (GCX 10; GCX 18.) As such, his limited conclusion of law should be corrected by the Board to encompass *all* unilateral changes made by Respondent when it unilaterally implemented in May and July 2016.

Cross-Exception 9: ALJ Locke Improperly Limited His Recommended Order to Only Those Unilateral Changes Affecting Compensation (ALJD 60:20–31)

Argument: In a similar manner to his Conclusions of Law, ALJ Locke’s Recommended Order is limited solely to unilateral changes affecting compensation. As his decision covers *all* unilateral changes implemented by Respondent in May and July 2016, the Board’s Order should be expanded to cover all these unilateral changes, and should include rescission and restoration language, along the lines cited above from *Anderson Enterprises*.

Cross-Exception 10: ALJ Locke Mis-Dated His Decision as Issuing on May 4, 2016 (ALJD at 62):

Argument: The underlying decision under review issued on May 4, 2017.

CONCLUSION

For the reasons discussed above, the Board should find merit Counsel's Cross-Exceptions, and otherwise adopt ALJ Locke's decision.

Dated: August 8, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Cross-Exceptions and Brief in Support of Exceptions on behalf of the General Counsel was filed via e-filing and served on August 8, 2017 by email on the parties whose names and addresses appear below.

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