

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

ART, LLC; GLEN LAKE'S MARKET, LLC;
THOMAS B. WARTMAN; THOMAS W. WARTMAN;
VICTORIA'S MARKET, LLC

Respondents,

Case Nos.	18-CA-168725
	18-CA-168726
	18-CA-168727
	18-CA-168728
	18-CA-168729

and

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 653

Charging Party.

CHARGING PARTY'S ANSWERING BRIEF

Pursuant to Section 102.46(d) of the NLRB Rules and Regulations, Charging Party United Food and Commercial Workers, Local 653 ("Union" or "Local 653"), hereby submits its Answering Brief in response to the above-captioned Respondents' Brief in Support of the Exceptions to the Decision of Administrative Law Judge Charles J. Muhl ("ALJ"), as filed with the Board on August 14, 2017.

This Answering Brief will respond to Respondents' arguments in the order that they appear in Respondents' Supporting Brief.

I. THE ALJ PROPERLY INCLUDED RESPONDENTS THOMAS B. WARTMAN, THOMAS W. WARTMAN, AND ART, LLC IN HIS REMEDIAL ORDER, AND RESPONDENTS HAVE WAIVED ANY ARGUMENT THAT THEY MAY NOT BE HELD LIABLE FOR THE UNFAIR LABOR PRACTICES ALLEGED IN THIS MATTER.

Respondents' first argument is that three of the Respondents—Thomas B. Wartman, Thomas W. Wartman, and ART, LLC—may be not subjected to the ALJ's remedial order because those Respondents were not found to be “employers” under the Act. *Respondents' Brief In Support of Exceptions (herein after “Resp.s’ Br.”) at 10–11.*

A. Respondents Have Waived Any Argument That Certain Respondents Are Not Subject To A Remedial Order Under the Act.

As a threshold matter, this argument fails because Respondents have waived it by not raising it in their brief to the ALJ. As to such waiver, the Board has repeatedly held that arguments may not be raised for the first time with exceptions to the Board. *See, e.g., Int’l Union of Op. Eng’rs, Local 513 (Ozark Constructors, LLC)*, 355 NLRB 145, 145 (2010) (dismissing exceptions based on arguments not raised before the ALJ); *JLL Rest. Inc.*, 347 NLRB 192, 195 (2006) (same); *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989) (“A contention raised for the first time in exceptions to the Board is ordinarily untimely raised and, thus, deemed waived.”). If Respondents believed that certain Respondents could not be held liable for any unfair labor practice under the NLRA, they should have raised this argument in their brief to the ALJ. By failing to do so, any such argument has been waived and must be rejected.

B. Thomas B. Wartman, Thomas W. Wartman, and ART, LLC Must Be Held Jointly Responsible For the Unfair Labor Practices Of Victoria’s Market, LLC and Glen Lake’s Market, LLC To Avoid Frustrating the Remedial Purposes Of the Act.

The Board has unequivocally held, with court approval, that where an individual jointly files and maintains an objectively baseless and retaliatory lawsuit with an employer, as in this case, “each is responsible for the acts of the other, and each can be subjected to a remedial order”

to avoid frustrating the remedial purposes of the Act. *Manno Elec. Inc.*, 321 NLRB 278, n. 3 (1996). In *Manno Electric*, after the employer, Manno Electric, Inc., and its owner, Jack Manno, jointly filed a baseless and retaliatory lawsuit against the union for engaging in protected activity, the union filed unfair labor practice charges against both Manno Electric and Jack Manno individually pursuant to the *Bill Johnson's* doctrine. *Id.* at 295–98. In response, (just as in this case) the respondents argued that Jack Manno should be dismissed from the proceedings because “the Board has no jurisdiction over Jack Manno personally for any purpose at all.” *Id.* at 295. The administrative law judge properly rejected that argument and held Jack Manno jointly liable for the employer’s unfair labor practices on the basis that:

It is clear in the instant case that Manno and Manno Electric acted in concert and jointly brought the state court suit. They were acting together and for each other. Manno, by joining with Manno Electric, acted with and for Manno Electric. Each participated in the alleged unfair labor practices, the filing of the state lawsuit. [...]

If Manno were permitted to bring the state lawsuit, without prejudice, he would be obtaining for Manno Electric indirectly what Manno Electric could not obtain directly, the pressing of an alleged illegal state lawsuit against the Union for which Manno Electric would benefit. Nothing in the Act gives the Company's principal that privilege.

Id.

Both the Board and the U.S. Court of Appeals for the Fifth Circuit subsequently affirmed this ruling by the ALJ. *See id.* n.3 (“We find no merit in Respondent Jack Manno's exception to the judge's denial of his motion to dismiss him individually from the complaint in Case 15-CA-12170, which involves the unlawful maintenance of portions of a state court lawsuit. We agree with the judge that it is appropriate to include Manno as an individual respondent in that case in order to avoid frustrating the remedial purposes of the Act. In this context it is not necessary to determine whether Jack Manno is an alter ego of Respondent Manno Electric, Inc. Member Cohen concludes that Respondent Jack Manno acted jointly with Respondent Manno Electric in

filing and maintaining the lawsuit. Accordingly, each is responsible for the acts of the other, and each can be subjected to a remedial order.”), *aff’d* 127 F.3d 34 (5th Cir. 1997).

In this case, the General Counsel explicitly cited *Manno Electric* on page 37 of its brief to the ALJ, and the ALJ properly subjected Thomas B. Wartman, Thomas W. Wartman, and ART, LLC to the remedial order notwithstanding his finding that these particular Respondents are not “employers” as defined by the Act.

With their exceptions, Respondents cite a single case, *Arkansas Lighthouse for the Blind v. NLRB*, 851 F.2d 180 (8th Cir. 1988), in support of their claim that the ALJ erred by “includ[ing] all Respondents in the Remedy and Order sections of the Decision.” *Resp.s’ Br. at 11*. However, *Arkansas Lighthouse* dealt solely with the issue of whether certain workers were statutory “employees” entitled to the protections of the Act. *Id.* at 182 (“The dispositive issue in this case is whether the Board abused its discretion when it held that the Lighthouse workers are “employees” within the meaning of the National Labor Relations Act.”). Whether an individual respondent may be held jointly liable with an “employer” for filing a lawsuit against a union in violation of Section 8(a)(1) is a wholly separate question, which the Board has unequivocally answered in the affirmative. *See Manno Elec.*, 321 NLRB at n. 3.

The ALJ properly included Respondents Thomas B. Wartman, Thomas W. Wartman, and ART, LLC in his remedial order, and Respondents exceptions to this ruling must be rejected in order to avoid frustrating the remedial purposes of the Act.

II. THE ALJ CORRECTLY RULED THAT RESPONDENTS’ STATE LAW TORTIOUS INTERFERENCE CLAIM IS PREEMPTED BY THE ACT.

With their second exception, Respondents claim that the ALJ erred when he held that Respondents state law tortious interference claim was preempted by the Act. *See Resp.s’ Br. at 12*.

A. Respondents’ State Law Tortious Interference Claim Is Preempted Because It Is Premised Solely On Alleged Violations Of Section 8(b)(4) Of The Act.

In support of this exception, Respondents first argue that their tortious interference claim was properly pleaded, and not preempted, because Respondents’ complaint also includes a separate defamation claim. *Id.* at 14–16. And since defamation can serve as the predicate tortious conduct of a tortious interference claim, Respondents assert that their tortious interference claim survives preemption. *Id.*

First of all, this argument, too, has been waived because Respondents did not raise it in their brief to the ALJ. *See Ozark Constructors, LLC*, 355 NLRB at 145; *JLL Rest. Inc.*, 347 NLRB at 195; *Yorkaire, Inc.*, 297 NLRB at 401.

In any event, Respondents’ argument fails because they are now deliberately mischaracterizing their own complaint to avoid preemption. The tortious interference claim, as pleaded, is explicitly based on the federal Section 303 claim—not the defamation claim. As the ALJ correctly noted

Respondents pled their Section 8(b)(4)(ii)(B) claim as both a Section 303 claim and a state law tortious interference claim. The Respondents rely on the same set of facts for both claims. It even confirms this in one of its allegations for the tortious interference claim, wherein it states: “Local 653 intentionally interfered with the above-named Plaintiffs’ reasonable expectation of economic advantage ***in a manner that directly violated the LMRA.***”

ALJ Decision at 23 (emphasis added). This cannot be disputed; one need only read Respondents’ complaint to see that the tortious interference claim is predicated on the alleged violations of federal labor law and distinctly not defamation. *See Jt. Ex. 1(n) ¶¶ 46–51.*

Furthermore, Respondents have dramatically mischaracterized the undersigned’s argument to the district court on this issue. In their brief, Respondents claim that “counsel for the Union ... acknowledged during the hearing on its motion to dismiss that a defamation claim could serve as a predicate for a tortious interference claim.” *Resp.s’ Br. at 15.* Respondents then

set forth the following block quote as purported evidence of capitulation, with the bold text added by Respondents:

Plaintiffs argue that because they have also asserted a defamation claim in their complaint and because defamation can serve as the predicate conduct of a tortious interference claim that somehow the tortious interference claim should survive. **Theoretically that's true.**

Id. (quoting oral argument transcript).

But now consider the complete quote from the oral argument transcript:

Plaintiffs argue that because they have also asserted a defamation claim in their complaint and because defamation can serve as the predicate conduct of a tortious interference claim that somehow the tortious interference claim should survive. **Theoretically that's true. That's not how they pled their complaint. If you read Paragraph 49 of the complaint, they've explicitly premised the tortious interference claim on the labor law violations. It is therefore preempted.**

Resp. Ex. 63 at 13 (emphasis added).

Far from agreeing with Respondents' argument, throughout this litigation the Union has argued that Respondents' tortious interference claim is preempted because it is premised on alleged secondary activity that is regulated by Section 8(b)(4) of Act, *See Resp. Ex. 60, pp. 27 – 32; Resp. Ex. 62, pp. 6–7*, and the U.S. Supreme Court has explicitly ruled that federal labor law preempts a state law tort claim premised on a union's alleged secondary activity. *See Teamsters v. Morton*, 377 U.S. 252, 260–61 (1964) (“[S]tate law has been displaced by § 303 in private damage actions based on peaceful union secondary activities[.]”).

Here, Respondents' tortious interference claim is essentially a repackaged state-law version of their Section 303 claim, and the ALJ correctly determined that the claim is preempted.

B. Respondents Have Not Alleged Union Violence In Their Complaint, And Respondents Have Waived Any Such Argument By Failing To Assert It In Their Brief To The ALJ.

As the ALJ considered, courts from the U.S. Supreme Court down have unanimously ruled that “Section 303 preempts state law tort claims premised on a union’s secondary activity, except where the claim involves union violence.” *ALJ Decision at 22.*

With their exceptions, Respondents argue for the first time that their tortious interference claim survives preemption because the Union engaged in violence by the Union. *Resp.s’ Br. at 16–17*. This argument must be rejected because it is both meritless and waived.

As to waiver, Respondents have never previously argued that their tortious interference claim avoids preemption based on union violence on the picket line. Accordingly, this argument has been waived. *See Ozark Constructors, LLC*, 355 NLRB at 145; *JLL Rest. Inc.*, 347 NLRB at 195; *Yorkaire, Inc.*, 297 NLRB at 401.

In any event, Respondents’ argument that it properly alleged union violence is patently meritless. Respondents’ claim of violence is based solely on its allegation that union representatives were “taking pictures of license plates and/or people in their cars.” *Resp.s’ Br. at 16*. In support of this argument, Respondents cite *Grinnell Fire Protection Systems Co.*, 328 NLRB 585, 604 (1999) and *Plastic Workers Union Local 18 (Grede Plastics)*, 235 NLRB 363, 383 (1978). However, neither *Grinnell* nor *Grede* establish that photographing license plates is, by itself, sufficiently violent to avoid preemption of a state law tortious interference claim. Indeed, in both *Grinnell* and *Grede*, the Board considered the act of photographing license plates to be intimidating in the context of actual threats of violence and vandalism—none of which is alleged in the instant case. *See Grinnell*, 328 NLRB at 603 –04 (ruling that tortious interference claims were not preempted based on violent and destructive conduct by union representatives such as a “threat of injury and the brandishing of a knife,” “blocking an employee’s egress from

the building,” and “throwing objects at vehicles and their occupants.”); *Grede*, 235 NLRB at 383 (finding that multiple egregiously violent acts by the union constituted violations of 8(b)(1), and stating that “*in the context of the threat on this and other occasions of retaliation at employees’ homes*, the recording of license numbers added to employee fears of retaliation.”) (emphasis added).¹

In sum, the Board has never ruled that the mere act of photographing a license plate constitutes “violence” for purposes of the exception to federal preemption of state law tortious interference claims. And in any event, Respondents have waived this argument by failing to raise it before the ALJ. The ALJ correctly deemed Respondents’ tortious interference claim preempted, and that ruling must be affirmed.

III. ASIDE FROM BEING PREEMPTED, RESPONDENTS’ STATE LAW TORTIOUS INTERFERENCE CLAIM IS OBJECTIVELY BASELESS.

Next, Respondents except to the ALJ’s alternative holding that their tortious interference claim lacks a reasonable basis in law because Respondents have failed to identify any third party with whom they had a reasonable expectation of a future economic relationship. *Resp.s’ Br. at 16–19*.

On this point, the ALJ correctly noted that under Minnesota law a plaintiff alleging tortious interference with prospective economic advantage must, as an essential element, “identify a specific third party with whom the defendant tortiously interfered.” *Gieseke v. IDCA, Inc.*, 844 N.W.2d 210, 221 (Minn. 2014) (“[R]equiring plaintiffs to demonstrate the existence of specific third parties with whom the plaintiff had a reasonable expectation of a future economic relationship means that defendants are liable only for the expectation that the relationship

¹ Furthermore, the Board in *Grede* dealt solely with the question of whether certain union conduct violated Section 8(b)(1), and *Grede* critically does not address the different question of whether certain conduct is sufficiently violent to preclude preemption of a state law tortious interference claim.

eventually will yield the desired benefit, rather than the more speculative expectation that a potentially beneficial relationship will arise.”).

Applying that legal rule to the evidence in this case, including Respondents’ own hearing testimony and complaint allegations, the ALJ concluded that

Here, the Respondents pled only that they would have realized a greater economic advantage from operation of the new stores, absent the Union’s conduct. They did not plead, present any evidence at the hearing in this case, or identify evidence they could obtain of specific third parties with whom the new stores reasonably expected to do future business.

ALJ Decision p. 23.

Instead of pointing to evidence or complaint allegations identifying a third party with whom Respondents reasonably expected to engage in future business, Respondents simply claim in conclusory fashion that they “had reason to believe they could have discovered this information” in discovery. *Resp.s’ Br. at 18.* With this argument, however, Respondents actually highlight the baselessness of their claim. If Respondents actually expected to engage in a future business relationship with an identifiable third party as the law requires, it follows logically that Respondents could identify that specific third party *with whom it expected to do business*. It makes no sense for Respondents to argue that discovery is necessary to identify entities with whom it expected to do business.

Respondents get no additional traction from Wartman Jr.’s double- and triple-hearsay testimony that “general managers at the new stores were receiving reports that customers said they were not going to shop at the new stores until the labor dispute resolved.” *Resp.s’ Br. at 18–19.* Even if this hearsay testimony carried any evidentiary weight, it is well-settled under Minnesota law that “the mere hope that some ... past customers may choose to buy again cannot be the basis for a tortious interference claim.” *ALJ Decision p. 23, citing Gieseke, 844 N.W.2d at 222.*

As the Board noted in *Milum Textile Services*, “the General Counsel had to prove that the Respondent, when it filed its complaint or during the time before it voluntarily dismissed the action, did not have and could not reasonably have believed it could acquire through discovery or other means evidence needed to prove essential elements of its causes of action.” 357 NLRB No. 169, p. 7 (2011). Here, one need only read Respondents’ complaint to see that they have not identified any specific third party with whom they expected to do future business. Nor did they identify any such third-party at trial, even though such facts would, *by definition*, have been known to Respondents without discovery. Accordingly, the ALJ properly ruled that Respondents’ tortious interference claim is objectively baseless in addition to being preempted.

IV. RESPONDENTS’ DEFAMATION CLAIM IS PREEMPTED BASED ON THE FAILURE TO PLEAD ACTUAL DAMAGES.

It is well-established that a plaintiff must “plead and prove” actual damages to support a state law defamation claim arising in the context of a labor dispute. *See Linn v. Plant Guard Workers*, 383 U.S. 53, 55 (1966) (“[W]here either party to a labor dispute circulates false and defamatory statements during a union organizing campaign, the court does have jurisdiction to apply state remedies if the complainant *pleads and proves* that the statements were made with malice and injured him.”) (emphasis added); *Beverly Health & Rehabilitation Serv., Inc.*, 336 NLRB 332, 333 (2001) (“For the plaintiff to prevail, he must prove not only defamation under State law, but also the Federal overlay of actual malice and damages.”).

Here, there can be no dispute as to Respondents’ failure to plead any actual damages; the complaint wholly fails to articulate any specifically compensable damages. Nor did Respondents provide any evidence of compensable damages during the hearing. As the ALJ correctly noted, Wartman Sr. “admitted during his testimony that he was unaware of any damage calculation by Respondents,” and Respondents’ counsel acknowledged that the \$75,000 claim in the complaint

is simply a reference to the minimum amount in controversy required for federal jurisdictional purposes. *ALJ Decision p. 25*. Indeed, Wartman Sr. and Wartman Jr. each took the stand multiple times during the three days of hearing in this case. Yet not one bit of evidence was introduced to demonstrate any actual damages related to the allegations of defamation. Instead, both Wartman Sr. and Wartman Jr. offered only anecdotal evidence of general reputational harm without ever claiming any specific monetary loss. *Wartman Sr. Test., Tr. 266–68; Wartman Jr. Test., Tr. 361–63*.

For their part, Respondents now claim that they will be able to prove damages after discovery on the substantive merits of their lawsuit, and the ALJ erred by requiring them to prove damages at the hearing in this matter. *Resp.s' Br. at 20–21*. However, once again, such an argument actually proves the baselessness of Respondents' defamation claim. When a plaintiff asserts defamation arising out of a labor dispute, such a claim is preempted pursuant to *Linn* unless the plaintiff "***pleads*** and proves that the statements were made with malice and injured him." 383 U.S. at 55 (emphasis added). Thus, if Respondents cannot articulate their actual damages without engaging in discovery, then *a fortiori* Respondents cannot plead any actual damages in the complaint as required by *Linn*. Furthermore, in *Milum Textile* the Board noted that in the *Bill Johnson's* context of an allegedly baseless state law defamation claim, as here, "a reasonable plaintiff would be in possession of evidence of the actual damages that it would have had to prove at trial under *Linn*." 357 NLRB at 2053.

The Board also articulated in *Milum Textile* that "[t]he General Counsel had to prove that the Respondent, when it filed its complaint or during the time before it voluntarily dismissed the action, did not have and could not reasonably have believed it could acquire through discovery or other means evidence needed to prove essential elements of its causes of action." 357 NLRB at

2053. Given the totality of the facts in this case, including the complaint itself, the ALJ was entirely justified in finding Respondents’ defamation claim preempted on the basis that (1) Respondents failed to plead any actual damages as required by *Linn*, and (2) Respondents failed to articulate any specific facts that it expected to acquire through discovery that would allow it to prove actual damages at trial. Respondents’ defamation claim is thus preempted.

Finally, contrary to Respondents’ argument at pages 21 through 24 of their brief, Respondents’ defamation claim is not saved by the state common law doctrine of defamation *per se*, which—outside of the labor dispute context—simply provides plaintiffs with a presumption of damages when the defamatory statement affects the plaintiff’s occupation. *See Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 259 (Minn. 1980). In fact, this point was directly addressed by the U.S. Supreme Court in *Linn*, where the Court noted that “[a]s we have pointed out, certain language characteristic of labor disputes may be held actionable *per se* in some state courts. These categories of libel have developed without specific reference to labor controversies. However, even in those jurisdictions, the amount of damages which may be recovered depends upon evidence as to the severity of the resulting harm.” 383 U.S. at 65; *see also Intercity Maintenance Co. v. Local 254 Maintenance Employees*, 241 F.3d 82, 89–90 (1st Cir. 2001) (“In explicitly requiring proof of harm, *Linn* preempts not only non-malicious libels, but also reliance on the common law presumption of damages in those jurisdictions where libel is actionable *per se*.”).

Indeed, it bears emphasizing that *Linn* itself points out that “*certain language characteristic of labor disputes may be held actionable per se in some state courts*” because labor-dispute-related statements will almost always affect an employer’s business. *Linn*, 383 U.S. at 65. Yet the holding in *Linn* explicitly extends “*even to those jurisdictions.*” *Id.* If

Respondents could avoid *Linn*'s requirement that they "plead and prove" damages simply by alleging defamation *per se*, such an exception would completely swallow *Linn*'s central holding that actual damages be set forth in the complaint. The Court clearly did not intend such an enormous loophole, and in fact the defamation claim at issue in *Linn* was itself initially pled as defamation *per se* and the Court yet found the complaint deficient. *Id.* at n.2 ("Although *Linn*'s complaint alleges that the leaflets were 'libelous per se,' his failure to specify the manner in which their publication harmed him indicates that he meant to rely on the presumption of damages. Under our present holding *Linn* must show that he was injured by the circulation of the statements; this necessarily includes proof that the words had a defamatory meaning.").

So while it is true that Minnesota law does not require proof of actual harm in cases of defamation *per se*, it is also true that the Act preempts such a claim in the labor context unless the plaintiff "pleads and proves" both actual malice and damages. Here, Respondents failed to plead actual damages, and they failed to articulate any specific damages even in response to direct questioning. *See Tr. 266–68; Tr. 361–63.* The ALJ correctly determined that the General Counsel satisfied its burden of demonstrating that Respondents' defamation claim is both preempted and objectively baseless.

V. THE ALJ PROPERLY RULED THAT RESPONDENTS' FILED THEIR LAWSUIT WITH A RETALIATORY MOTIVE AND, ACCORDINGLY, MAY BE REQUIRED TO REIMBURSE THE UNION FOR ITS LEGAL FEES INCURRED IN DEFENDING THE STATE LAW CLAIMS.

Finally, with their fifth exception, Respondents argue that they should not be held liable for the Union's legal fees incurred in defending the preempted state law claims because Respondents view those claims as only a "tertiary" part of their lawsuit" that "only received a small fraction of the attention of the parties." *Resp.s' Br. at 25.*

In support of this novel argument, Respondents cite a single case, *NLRB v. Allied Mechanical*, 734 F.3d 486 (6th Cir. 2013), a case in which the Sixth Circuit found that the employer’s *entire* lawsuit was neither objectively baseless nor retaliatory. *Id.* at 492–94. Nothing in *Allied Mechanical* supports the argument offered by Respondents: that state law claims found to be preempted and/or objectively baseless pursuant to *Bill Johnson’s* may yet be excused so long as they are not the “primary impetus” of the case. *See Resp.s’ Br. p. 26.* No case says that, and Respondents point to none.

Furthermore, it is important to note that the federal claims at issue in *Allied Mechanical* were not found to be *preempted*, like the state law claims at issue in Respondents’ exceptions. This is a critical distinction because preempted state law claims may be held to violate of Section 8(a)(1) if filed for a retaliatory motive, *even without regard to whether the claims are objectively baseless*. *See J.A. Croson Co.*, 359 NLRB No. 2, at 8 (2012) (“[U]nder *Bill Johnson’s*, the Board has the authority to determine if a lawsuit brought under state law is preempted by the NLRA. If it is, and if it otherwise violates the NLRA, the Board may hold that the filing and maintenance of the lawsuit is an unfair labor practice without regard to whether it is objectively baseless[.]”).

Respondents claim that they should not be penalized for “thorough lawyering.” However, the filing and maintenance of baseless and preempted state law claims with a retaliatory motive is not “thorough lawyering.” It is an abuse of process. A thorough lawyer would have recognized that the state law tortious interference and defamation claims asserted here were preempted and unlawful under federal labor law. Ultimately, Respondents acted of their own volition by filing a lawsuit against the Union in violation of Section 8(a)(1), and they cannot now complain about the consequences of their own actions. Even if it were true that the

state law claims “received a small fraction of the attention of the parties,” as Respondents claim, the Union should not have been forced to expend *any* of its limited resources defending those retaliatory² claims, and Respondents should be required to reimburse the Union for its legal fees as a remedy.

CONCLUSION

For the foregoing reasons, the Charging Party respectfully requests that the Board reject Respondents exceptions to the ALJ’s decision in their entirety.

Dated: August 28, 2017

MILLER O’BRIEN JENSEN, P.A.

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² Notably, Respondent has not excepted to the ALJ’s finding that their lawsuit was motivated by animus toward the Union.

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

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UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 653

Charging Party.

CERTIFICATE OF SERVICE OF CHARGING PARTY'S ANSWERING BRIEF

I hereby certify that, on August 28, 2017, I caused the following document:

- Charging Party's Answering Brief

to be e-filed with the Board in Washington D.C. through the NLRB's website and served by e-mail to the following parties:

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Dated: August 28, 2017

/s/Timothy J. Louris

Timothy J. Louris, Esq.