

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	iii
INTRODUCTION.....	1
BRIEF FACTUAL HISTORY	2
ARGUMENT.....	7
The General Counsel Has Not Asserted Any Viable Basis to Reverse The ALJ Decision To Dismiss The Instant Complaint.....	7
I. The General Counsel’s Exceptions to Specific Factual Findings Made by the ALJ.....	7
A. General Counsel Exception #1 Should Not Be Granted: The Record Evidence Supports the Language of the ALJ Decision	7
B. General Counsel Exception #2 Should Be Granted to Modify The ALJ Decision	9
C. General Counsel Exception #3 Should Not Be Granted: The Record Evidence Supports the Language of the ALJ Decision	10
D. General Counsel Exception #7 Should Not Be Granted: The Record Evidence Supports the Language of the ALJ Decision	12
E. General Counsel Exceptions #8 Should Not Be Granted: The Record Evidence Supports the Language of the ALJ Decision	16
II. The General Counsel’s Exceptions Relating to the ALJ’s Purported Failure to Make Specific Factual Findings.....	18
A. General Counsel Exception #18 Should Not Be Granted: The Record Evidence Does Not Support His Contention that, Between October 2015 and August 29, 2016, the Parties’ Discussions About Future Voluntary Incentive Plans were Exclusively Related to A Mid-2017 Layoff	18

B.	General Counsel Exceptions #19, #20 and #21 Should Not Be Granted: The Record Evidence Does Not Support the Findings Advocated by The General Counsel.....	24
III.	The General Counsel's Exceptions to the ALJ's Legal Conclusions.....	28
A.	Any Assessment of the Company's Flexibility in its Position Must Recognize That the Company Had No Obligation to Offer Any Incentive Relating to the 2016 Layoffs	29
B.	The Issue of the Union's Waiver of Rights, as Found by the ALJ, is a Narrow One: Did the Union Waive its Right to Object to the Company's Maintenance of the Incentive Offer By its Failure to Advise the Company of its Position?	31

TABLE OF CITATIONS

<u>Cases:</u>	<u>Page</u>
Electrical Workers Local 47 v. NLRB 927 F.2d 635 (D.C. Cir. 1991)	30
Gannett Co., 333 NLRB 355 (2001)	29
Ohio Energy Corp., 362 NLRB No. 88 (2015)	29, 30
Pontiac Osteopathic Hospital, 336 NLRB 1021 (2001).....	29, 30
 <u>Statutes</u>	
National Labor Relations Act, 29 U.S.C § 151 et. seq.	1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HARLEY-DAVIDSON MOTOR COMPANY, :

v. :

Case: 5-CA-183791

INTERNATIONAL ASSOCIATION OF :
MACHINISTS AND AEROSPACE WORKERS, :
TYSON LODGE 175, DISTRICT 98 :

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing document was served electronically through the NLRB E-filing system upon the following:

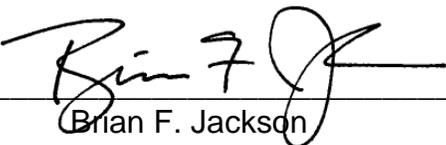
Gary Shinnors, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570

Additionally, I certify that a copy of this document has been served electronically upon the following:

Nancy B.G. Lassen, Esquire for Charging Party
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103-4708

Andrea Vaughn, Field Attorney
National Labor Relations Board
Region 5
100 South Charles Street, Suite 600
Bank of America Center – Tower II
Baltimore, MD 21201
Andrea.Vaughn@nlrb.gov

Date: September 22, 2017



Brian F. Jackson