

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

**LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO. 91
(SCRUFARI CONSTRUCTION CO., INC.)**

And

**Cases 03-CB-196682
03-CB-201412**

RONALD J. MANTELL, an Individual

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

Pursuant to Section 102.46(a) of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits these Exceptions to the Decision of Administrative Law Judge David I. Goldman ("ALJ"), dated December 11, 2017, in the above-captioned cases.

Exception 1:

The ALJ's finding that Laborers' International Union of North America, Local Union No. 91 ("Union" or "Respondent") did not unlawfully deny referrals to Ronald Mantell ("Mantell") because of his brother's protected concerted activity. (ALJD 9:27-9:34.)¹ The exception is based, in part, on the ALJ's failure to apply *Wright Line*, 251 NLRB 1083 (1980), instead erroneously imposing on the General Counsel the heightened burden of proof articulated in *FES (A Division of Thermo Power)*, 331 NLRB 9 (2000), imposed exclusively in refusal to hire cases. (ALJD 7:15-7:18). Further, even if *FES* is the appropriate standard, the record evidence nonetheless demonstrates that the Union violated the Act and the ALJ erred in finding to the contrary. (ALJD 5:20-9:10.)

¹ Hereafter, "ALJD ___:___" refers to the page and line numbers from the ALJ's Decision issued December 11, 2017.

Exception 2:

The ALJ's finding that the Union did not violate the Act by bringing internal union charges against Mantell in retaliation for his brother's protected and concerted activity, including the subsequent fine and suspension of Mantell. (ALJD 12:9-14:22). The exception is based on the ALJ's misapplication of *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1420 (2000).

Exception 3:

The ALJ's finding that the Union did not violate the Act by changing its practice regarding members' access to the out-of-work list. (ALJD 18:6-18:41). The exception is based, in part, on record evidence establishing that the Union made the change only after Mantell – and other members – sought to police the list, rendering the change an unlawful retaliation for protected activity.

DATED at Buffalo, New York, this 8th day of January, 2018.

Respectfully submitted,

/s/

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