UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASCADES CONTAINERBOARD PACKAGING-
LANCASTER, A DIVISION OF CASCADES NEW
YORK, INC.

Case No. 03-CA-210207

and

GRAPHIC COMMUNICATIONS CONFERENCE/
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 503-M

EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE ON BEHALF OF RESPONDENT CASCADES CONTAINERBOARD PACAKGING-LANCASTER, A DIVISION OF CASCADES NEW YORK, INC.

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board") Respondent Cascades Containerboard Packaging-Lancaster, A Division of Cascades New York, Inc. ("Cascades") excepts to the following parts of the record in the above-captioned case: the Decision of the Administrative Law Judge ("ALJ"), dated November 23, 2018, as identified below.

Exceptions to the Decision of the ALJ

Respondent respectfully excepts to:

1. The finding/conclusion that Graphic Communications Conference/International Brotherhood of Teamsters, Local 27C ("Local 27") changed names and internal leadership over time through mergers/affiliations (ALJ 3:5-6).
2. The finding/conclusion that prior to 2012, Local 27 experienced an extreme drop in membership after a business, whose employees were represented by Local 27, closed down (ALJ 3:12-14).
3. The finding/conclusion that Local 27 went from "a steady membership of around 341 in the years preceding 2010 to only 156 members in 2012" (ALJ 3:14-15).
4. The finding/conclusion that Local 27 "could no longer support itself financially" (ALJ 3:17).
5. The finding/conclusion that the Constitution of the Graphic Communications Conference of the International Brotherhood of Teamsters supports the assertion that "lack of membership made Local 27 financially unviable" (ALJ 3:fn 5).
6. The analysis characterizing Stafford's testimony as stating that there was a "lack of interest among the remaining units' employees in running for the local union official positions" (ALJ 3:18-20).

7. The finding/conclusion that Stafford becoming the trustee of Local 27 broadly occurred in 2012 (ALJ 3:27).
8. The finding/conclusion that Stafford began to clean up Local 27's finances and put its records in order (ALJ 4:1-2).
9. The finding/conclusion that union stewards were elected pursuant to the bylaws of Local 27 (ALJ 4:10-11).
10. The finding/conclusion that Stafford "credibly testified that he reviewed dues deduction and remittance documents, not Local 27's bylaws, to understand [the Local 27 dues] structure" (ALJ 4:20-21).
11. The finding/conclusion that the Unit's stewards were elected in accordance with required International Constitution provisions (ALJ 4:21-23).
12. The finding/conclusion that few, if any, distinctions between Local 27's and Local 503's bylaws exist in the record (ALJ 4:23-24).
13. The absence of a finding that the bylaws of Local 27 and Local 503 differed in many ways, including but not limited to the e-board makeup, the dues structure and the benefits (Tr. pp. 180-182).
14. The conclusion/analysis that since 2012, non-specified union stewards represented Unit employees by bargaining resolutions to grievances, meeting with representatives concerning labor/management, and negotiating new collective bargaining agreements (ALJ 4:25-27).
15. The finding/conclusion that Stafford spoke with union stewards via telephone "a few times per week" (ALJ 4:31-32).

16. The finding/conclusion that holding union meetings with the membership of Local 27 at the VFW hall was a practice prior to the trusteeship being imposed (ALJ 4:34-36).
17. The finding/conclusion mischaracterizing Stafford's testimony regarding membership inquiries relating to the completion of the administrative transfer at contract negotiation meetings (ALJ 5:2-3).
18. The finding/conclusion that type-written, signed notices were posted on the bulletin board near the time clock and in the employee lunchroom to inform Unit employees that the administrative transfer of Local 27 to Local 503 was complete (ALJ 5:14-17).
19. The finding/conclusion mischaracterizing testimony that Stafford himself posted notices informing employees of the completion of the administrative transfer (ALJ 5:14-17).
20. The finding/conclusion that "[s]ince the administrative transfer, Local 503 has approximately 501 active members" (ALJ 5:18-19).
21. The finding/conclusion that since the administrative transfer, Stafford has represented the Unit in the same manner that he had as the Trustee of Local 27, but with more resources (ALJ 5:21-23).
22. The finding/conclusion that Stafford never took a grievance to arbitration as the trustee of Local 27 due to inadequate resources (ALJ 5:23-24).
23. The finding/conclusion mischaracterizing Stafford's testimony that he held a meeting specifically to invite Local 27 members to join the Local 503 executive board (ALJ 5:fn 7).
24. The finding/conclusion mischaracterizing Local 503's regular monthly membership meetings being a 45 to 60-minute drive from the Lancaster facility (ALJ 5:fn 8).

25. The finding/conclusion that Stafford "informed human resources manager Michelle Rosowicz (Rosowicz) of the completion of the transfer in conversations and during the regularly scheduled monthly labor/management [meeting] in April 2017" (ALJ 6:1-3).
26. The finding/conclusion that "[i]n written communications concerning the Unit employees after the administrative transfer, Stafford held Local 503 out as the exclusive-bargaining representative of the Unit employees without any mention of Local 27" (ALJ 6:3-5).
27. The finding/conclusion that Stafford held Local 503 out as the bargaining representative for the Unit employees in "other communications" (ALJ 6:10-11).
28. The finding/conclusion that Rosowicz gave "evasive" responses to questions soliciting when Respondent first learned of the completion of the administrative transfer and Local 503's assertion that it represented the Unit employees (ALJ 6:10-13).
29. The finding/conclusion that Rosowicz was "not straight forward in her answers to these questions because of some apparent concern on her part that it would affect Respondent's assertion that it did not learn until October 2017 of the dissolution of Local 27" (ALJ 6:13-16).
30. The finding/conclusion that Rosowicz was aware that Local 503 was the collective bargaining representative of Unit employees in April 2017 (ALJ 6:16-18).
31. The finding/conclusion mischaracterizing testimony that Rosowicz was aware that Local 503 was the collective bargaining representative of the Unit, and that is why she changed the way she addressed letters to Stafford (ALJ 6:18-22).

32. The finding/conclusion that Respondent was aware that the transfer was complete and Local 503 was the exclusive bargaining representative of the Unit in April 2017 (ALJ 6:22-25).

33. The finding/conclusion that Rosowicz continued to meet and bargain with Stafford and union stewards with knowledge that Stafford or Local 503 represented Unit employees (ALJ 6:27-30).

34. The finding/conclusion that meeting turnout is low regardless of where the meetings are held (ALJ 6:fn 7).

35. The finding/conclusion that Rosowicz, while refusing to arbitrate the grievance related to employees' wages, continued to negotiate with Stafford as the bargaining representative of the Unit employees through November 2017 (ALJ 7:5-7).

36. The finding/conclusion that "[t]he record contains some evidence that this failure to process grievances through arbitration has discouraged employees from raising grievances" (ALJ 8:25-27).

37. The finding/conclusion crediting the evidence "that this failure to process grievances through arbitration has discouraged employees from raising grievances" and that it is a "reasonable response by employees as a result of the December 19 meeting" (ALJ 8:26-28).

38. The conclusion/analysis that *NLRB v. Financial Institution Employees of America, Local 1182, Chartered by United Food and Commercial Workers International Union, AFL-CIO et al.* and *Amoco Production Co.* are applicable to the facts of the instant case and the reliance upon said case law (ALJ 8:36-38).

39. The finding/conclusion that a due process vote to validate reorganization of a union's internal structure is not required (ALJ 8:fn 10).

40. The conclusion/analysis that *The Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007) is applicable to the facts of the instant case and the reliance upon said case law (ALJ 8:fn 10).

41. The conclusion/analysis that *Sullivan Bros. Printers*, 317 NLRB 561 (1995) and *News/Sun-Sentinel Co.*, 290 NLRB 1171 (1988) are applicable to the facts of the instant case and the reliance upon said case law (ALJ 9:fn 10).

42. The finding/conclusion that a local union can seek to affiliate with another for a variety of reasons such as bargaining expertise, financial support, or lack of leadership within the affiliating union (ALJ 8:38-9:2).

43. The finding/conclusion that affiliations with national, international, or local unions, do not affect union representative status or the employer's duty to bargain with the union (ALJ 9:7-9).

44. The finding/conclusion that the evidence supports that the trusted Local 27 operated as the Unit's collective bargaining representative as it fits within Section 2(5) of the Act for about 5 years (ALJ 10:6-8).

45. The finding/conclusion that Respondent bargained with the trusted Local 27 throughout the 5 year period without raising issue of its bargaining status or continuity of representation with Local 27 prior to Local the trusteeship (ALJ 10:8-10).

46. The finding/conclusion that Respondent is not permitted to rely on the LMRDA in the litigation of representational issues (ALJ 10:17-19).

47. The finding/conclusion that there is no merit to the contention that unions can manufacture continuity of representation by "maintaining trusteeships that closely resemble the representation the union wishes to impose by its ultimate, yet delayed, merger plans" (ALJ 10:24-26).

48. The finding/conclusion that there are significant differences between the totality of the circumstances surrounding the trusteeships in the instant case and *Quality Inn Waikiki*, 297 NLRB 497 (1989) (ALJ 11:7-8, 25-26).

49. The finding/conclusion that Local 27's membership "declined significantly" (ALJ 11:21).

50. The finding/conclusion that "the evidence of decreasing membership corroborates the uncontradicted testimony of Stafford and Lacy that Local 27's president Roman sought assistance with the local because of economic hardships and lack of interest in union positions as is contemplated by the International Constitution" (ALJ 11:22-25).

51. The finding/conclusion that questioning the continuity of representation puts employers in the position of making representation choices for employees' that they were free to have made themselves (ALJ 11:fn 12).

52. The finding/conclusion that differences in bargaining statuses of the locals distinguishes *Quality Inn Waikiki* from the instant case (ALJ 12:1-3).

53. The finding/conclusion that the Board's decision in *Quality Inn Waikiki* is not controlling in the instant case (ALJ 12:3-5).

54. The finding/conclusion that an argument can be made that Respondent is "estopped" from contending a lack of continuity of representation exists prior to the period where

Local 27 was placed into trusteeship because it bargained with Local 27 for beyond a 6 month period of time (ALJ 12:fn 13).

55. The finding/conclusion that "an employer can question the continuity of representation when a trusted local is administratively transferred or otherwise merged into another local" (ALJ 12:8-10).

56. The finding/conclusion that the proper consideration is whether continuity of representation existed between the time immediately before and immediately following the administrative transfer was completed on April 1, 2017 (ALJ 12:10-12).

57. The absence of a finding that the appropriate time period to examine for purposes of continuity of representation is the pre-trusteeship timeframe (Tr. 21-23).

58. The finding/conclusion that the factors considered by the Board in assessing continuity of representation did not change after the administrative transfer was completed in comparison to the status of those same factors during the trusteeship (ALJ 12:16-18).

59. The finding/conclusion that Stafford retained substantially the same responsibilities as the president of Local 503 that he had as the trustee for Local 27 (ALJ 12:18-20).

60. The finding/conclusion that the 2016 CBA continued to be enforced (ALJ 12:21).

61. The finding/conclusion that Unit employees gained more access to union leadership positions than they had during the five previous years under the trusteeship (ALJ 12:30-33).

62. The finding/conclusion that the bylaws of Local 503 are applicable to the Unit instead of the bylaws of Local 27 (ALJ 12:33-34).

63. The finding/conclusion that the Local 27 bylaws were the bylaws applicable to the Unit until the administrative transfer was complete despite a lack of reliance by Stafford (ALJ 12:fn 14).

64. The finding/conclusion that after administrative transfer to Local 503, the geographical area extended from Buffalo and Niagara Falls to Rochester and Syracuse (ALJ 12:35-13:1-2).

65. The finding/conclusion that Stafford holds "membership meetings in Buffalo on an infrequent, as needed, basis to address issues with and encourage participation by the members employed in the Buffalo area" (ALJ 13:2-5).

66. The finding/conclusion that here, changes in geographic size, membership makeup, bylaws, and bargaining power in affiliated locals do not constitute sufficient evidence of dramatic changes in the continuity of representation (ALJ 13:10-13).

67. The conclusion/analysis that *CPS Chemical Co.*, 324 NLRB 1018 (1997) is applicable to the facts of the instant case and the reliance upon said case law (ALJ 13:13-21).

68. The finding/conclusion that the increase in geographical area is not beyond what would ordinarily be expected in a merger or affiliation (ALJ 13:28-29).

69. The finding/conclusion that the "main effects of the transfer from Local 27 into Local 503 were more financial stability, leadership, and bargaining power" (ALJ 13:29-30).

70. The finding/conclusion that "these are the types of effects [e.g., financial stability, leadership, and bargaining power] sought by unions through internal reorganization which the Board and the Supreme Court have held should remain unfettered" and the reliance upon cited case law (ALJ 13:30-33).

71. The finding/conclusion that there is insufficient evidence to support a finding of a lack of continuity of representation and thus Respondent's withdrawal of recognition of Local 503 on December 19, 2017 violated Section 8(a0(5) and (1) of the Act (ALJ 13:35-14:2).

72. The finding/conclusion that the framework for local bylaws required by the International Constitution limited the scope of the differences between the two locals' bylaws and dues structure (ALJ 13:fn 14).

73. The finding/conclusion that the differences between the two locals' bylaws are not "sufficiently dramatic" as to alter the union's identity (ALJ 13:fn 14).

74. The finding/conclusion that Respondent put Local 503 on notice that it had concerns about its purported representation of Unit employees in or around June 29, 2017 when Rosowicz changed how she addressed letters to Stafford (ALJ 14:24-26).

75. The finding/conclusion rejecting Respondent's argument that "it was not aware of the dissolution of Local 27 until October 2017, and that it withdrew recognition approximately 2 months later, well within the 6-month statute of limitations" (ALJ 15:10-13).

76. The finding/conclusion that "the transfer and commingling of assets, where one local is assumed into another local, are natural and foreseeable consequences of a merger" (ALJ 15:12-14).

77. The finding/conclusion that the "commingling of Local 27's assets and its dissolution as a separate entity" were foreseeable consequences of the transfer which Respondent knew of since April 2017 (ALJ 15:14-17).

78. The finding/conclusion that Respondent had or should have had knowledge of the transfer and its foreseeable consequences for at least 7 ½ months before it withdrew recognition on December 19, 2017 and is therefore barred by the statute of limitations from raising a lack of continuity of representation defense against allegations that it withdrew recognition in violation of Section 8(a)(5) and (1) (ALJ 15:17-20).

79. The finding/conclusion that if a lack of continuity of representation defense existed, Respondent would be barred by Section 10(b) of the Act of raising the defense to justify its withdrawal of recognition of Local 503, in violation of Section 8(a)(5) and (1) of the Act (ALJ 15:22-25).

80. The finding/conclusion that Respondent would continue to refuse to abide by Article 5 of the 2016 CBA when it informed Unit employees that it had withdrawn recognition from the collective bargaining representative (ALJ 15:35-37).

81. The finding/conclusion that Respondent's actions pursuant to its belief that it had no bargaining obligation with Local 503 were erroneous (ALJ 15:37-39).

82. The finding/conclusion that the 2016 CBA is between the "parties" (ALJ 16:4-7).

83. The finding/conclusion that Respondent's refusal to abide by the CBA's grievance/arbitration procedure is a refusal to arbitrate, which amounts to a wholesale repudiation of the collective bargaining agreement in violation of Section 8(a)(5) and (1) of the Act (ALJ 16:7-10).

84. The finding/conclusion that "since April 1, 2017, Local 503 has been the exclusive bargaining representative of the Unit employees as a result of internal union reorganization" (ALJ 16:20-21).

85. The finding/conclusion that "Respondent's refusal to comply with Article 5 of the 2016 CBA without meeting the requirements of Section 8(d) of the Act is a violation of Section 8(d)" (ALJ 16:21-23).

86. The finding/conclusion that Respondent has failed and refused to collectively bargain in good faith with Local 503 (ALJ 16:25-26).

87. The finding/conclusion that Local 503 is the exclusive collective-bargaining representative of Respondent's employees (ALJ 16:26-27).

88. The conclusion of law that Local 503 is and has been the exclusive collective-bargaining representative of Respondent's employees since April 1, 2017 (ALJ 16, Conclusion #3).

89. The conclusion of law that "[s]ince August 25, 2017, Respondent failed and refused to bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act by failing and refusing to arbitrate grievances pursuant to the grievance/arbitration procedure in article 5 of the collective-bargaining agreement covering the unit employees, which Respondent entered into with the Union in 2016, thereby repudiating the collective bargaining agreement" (ALJ 16-17, Conclusion #4).

90. The conclusion of law that Respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the Union on or about December 17, 2017 (ALJ 17, Conclusion #5).

91. The absence of a finding that Respondent does not have a collective bargaining agreement with Local 503 (Tr. 18-23).

92. The absence of a finding that Local 503 has not assumed Local 27's bargaining rights (Tr. 18-23).

93. The absence of a finding that Respondent has no obligation to bargain with Local 503 (Tr. 18-23).

94. The remedies recommended by the ALJ against Respondent, including, but not limited to, the requirement that Respondent Employer recognize and bargain with the Union; the requirement that Respondent Employer restore the terms and conditions of employment that were in effect prior to August 25, 2017; the requirement that Respondent Employer waive procedural time limits to the filing; the requirement that Respondent Employer post at its Lancaster, New York facility copies of the "Appendix"; the requirement that Respondent Employer hold a meeting during working hours where the "Appendix" is to be read aloud to Unit employees at the Lancaster facility; the requirement that Respondent Employer electronically distribute the paper notices (ALJ 17-18).

95. The ALJ's recommended order to the extent that it requires Respondent to take action based on the ALJ's erroneous findings and conclusions of law, as more fully set forth in the Exceptions above and Respondent's Brief in support of these Exceptions (ALJ 19-20).

96. The ALJ's proposed notices to the extent the language of the notices is based on the ALJ's erroneous findings and conclusions of law, as more fully set forth in the Exceptions above and Respondent's Brief in support of these Exceptions (ALJ, Appendix).

Dated: January 22, 2019

Respectfully submitted,

JACKSON LEWIS P.C.

By: _____

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HENRY S. SHAPIRO

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3

CASCADES CONTAINERBOARD PACKAGING-LANCASTER, A DIVISION OF CASCADES NEW YORK, INC.

and

Case No. 03-CA-210207

GRAPHIC COMMUNICATIONS CONFERENCE/ INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 503-M

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of January, 2019, I served a true copy of **EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE ON BEHALF OF RESPONDENT CASCADES CONTAINERBOARD PACAKGING-LANCASTER, A DIVISION OF CASCADES NEW YORK, INC.** *via* the National Labor Relations Board's electronic filing service and via electronic mail on:

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