

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C. BRANCH OFFICE**

LION ELASTOMERS LLC

Respondent

and

**Cases 16-CA-190681
16-CA-203509
16-CA-225153**

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, LOCAL 228**

Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S
MOTION TO OFFER LIMITED SUR-REPLY**

At Respondent's request, Your Honor granted the parties leave to reply to the post-hearing briefs. Respondent, but neither the General Counsel nor the Charging Party, filed such briefs. Counsel for the General Counsel now requests leave to file a limited response to Respondent's Reply Brief and offers the response below.¹

In its Brief in Reply to the General Counsel's Post Hearing Brief to the Administrative Law Judge, Respondent declares that Counsel for the General Counsel "submits a self-serving, overly simplified version of the robust record evidence – a version that omits key details and misrepresents others" and "conveys outright falsehoods, holding them out to be truths." With respect to Respondent's assertions that the Counsel for the General Counsel "convey[ed] falsehoods" or misrepresented the facts, Counsel for the General Counsel contends that the

¹ The Charging Party does not oppose Counsel for the General Counsel's motion. The Respondent opposes the motion.

assertions are either wrong, trivial, or both, but will not address them specifically unless asked to by Your Honor.

With respect to the alleged omissions, Counsel for the General Counsel likewise will only address the specific assertions if asked to do so by Your Honor. At the macro-level, however, some explanation is herein offered.

Respondent compares its 28-page recitation of facts to the General Counsel's succinct summary and declares the latter to be "oversimplified." Although Respondent may be proud of its lengthy account of the "robust record evidence," Counsel for the General Counsel respectfully maintains his right to hold a different view of relevance.

Given the differing views of relevance, Counsel for the General Counsel's brief can both have been written with integrity and at the same time not discuss the minutiae of labor relations at the plant over the course of several decades. It should come as no surprise that the parties' accounts of the facts would discuss and emphasize different facts because each side presented a significantly different legal analysis.

The parties only shared analytical common ground with respect to the Charging Party's conduct during the safety meeting, each arguing the matter under *Atlantic Steel*. With respect to the ultimate issue of the case, the discharge, the parties' analyses were ships passing in the night. Counsel for the General Counsel argued that the termination should not be decided under the motivational test of *Wright Line* and instead argued the case with reference to *Interboro Contractors*, *NLRB v. City Disposal Systems*, *Phoenix Transit System*, *OPW Fueling Components*, *Desert Cab*, *Roadmaster Corp.*, *Ogihara America Corp.*, *United Parcel Service of Ohio*, and *Union Fork and Hoe Co.* Respondent conversely, did not cite to any of the former, their predecessors or their progeny, but rather argued that the case was a motivation case to be

considered under *Wright Line*. Given that the parties' analyses centered on different legal frameworks, it certainly makes sense that one party might fail to include facts that another included.

As set forth above, Counsel for the General Counsel requests that Your Honor accept this limited response into the record and reject Respondent's contentions.

DATED at Fort Worth, Texas this 17th day of April, 2019.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Counsel for the General Counsel's Motion to Offer Limited Sur-Reply to the Administrative Law Judge has been served this 17th day of April 2019, via electronic mail upon each of the following:

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