

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Dallas Airmotive, Inc.,

Respondent

V.

International Association of Machinists and
Aerospace Workers, AFL-CIO, District 776,

Charging Party

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Case 16-CA-192780

**REPLY TO CHARGING PARTY'S ANSWERING
BRIEF TO RESPONDENT'S EXCEPTIONS TO ALJ'S DECISION**

Not until very late in Charging Party's Answering Brief ("CP's Brief") does a position responsive to Respondent's Exceptions come to light. It largely ignores the explicit Board mandate to limit itself to matters raised in Respondent's exceptions and supporting brief. Rather, Charging Party takes the opportunity to recast and mischaracterize the underlying testimony and facts, display irrelevant testimony, and finally, in the last few pages, urge distinguishable law.

1. What did the Union Representative Do During Bargaining and Thereafter?

Throughout CP's Brief, testimony from Doyle Huddleston, Charging Party's business agent and chief spokesperson in relevant negotiations, is heavily relied upon. In seemingly a single breath, Mr. Huddleston would testify to supposed prejudicial statements against Respondent, and then fully disclaim any substantive responsibility for anything associated with this case. Remarkably, Charging Party's decision maker, Mr. Huddleston, testifies in a manner that seems oddly disassociated with the history of this case.

- Without any negotiations, Mr. Huddleston purportedly signed the 2014 Shutdown Agreement after it was presented by Respondent. CP Brief, p. 14. Charging Party further asserts that Huddleston signed the agreement having given little input, because of the gravity of employees losing their jobs and his effort to obtain any benefit he could for them. *Id.* The bargaining minutes taken at or about the time of multiple meetings between Respondent and Charging Party, show otherwise. Respondent Exhibit's 10, 11, 12 and 13.
- Huddleston does not appear to know anything about how the terms of the 2015 Shutdown Agreement were reached. Similar to the 2014 Shutdown Agreement, Charging Party argues that the 2015 Shutdown Agreement was purportedly provided to him by the Company with little to no input from Charging Party. Yet again, the bargaining minutes, taken at the time of the negotiations, tell a different story. Respondent's Exhibits 2 through 8. Charging Party had plenty of input into negotiating the agreements. This conclusion was confirmed in the Administrative Law Judge's Decision who found the 2015 Shutdown Agreement to be bargained in good faith and fully enforceable against Charging Party. Decision p. 29
- Mr. Huddleston's apparent malaise was purportedly present throughout the 2015 negotiations:
 - Mr. Huddleston somehow thought that Forest Park employees would only be transferred to Respondent's other existing locations in the DFW Metroplex, namely Heritage Park or Love Field. Remarkably, he

then admits that during negotiations, he toured the DFW Center that was under construction at the time.

- He apparently did not ask for nor raise in negotiations particular demands associated with the transfer of Forest Park employees to another facility: job security, rules of conduct, discipline and discharge procedures, seniority, hours of work, shift schedules, overtime accrual and pay, vacation leave accrual and pay, reporting and call back pay, temporary assignments, job selection, promotions, health and safety, dues checkoff. CP Brief p. 47. But, Huddleston did agree and signed off on a critical term: that whatever location the Forrest Park employees transferred to, the terms and conditions of employment at that facility would apply. Joint Exhibit 28.
- Mr. Huddleston (or someone under his control) failed to take or record any bargaining notes or he simply failed to keep them. Tr. 200-201. Remarkably, Charging Party now complains about the Company's bargaining minutes that were provided to the union at the time negotiations occurred.
- Huddleston did not review the communication to bargaining unit employees for the ratification vote which encompassed the 2015 Shutdown Agreement. Tr. 201-203. He left that written communication to a union committeeman that apparently had no authority to act on behalf of Charging Party. *Id.* That communication,

assuredly critical to the decision of the bargaining unit members'

decision to support or oppose the 2015 Shutdown Agreement, states:

"During the Course of these negotiations the parties took a break from contract renewal bargaining to discuss a Facility Closure Agreement. ***It has been the Company's position throughout negotiations and that position has been repeatedly shared with the union that the facility closing subjects would best be addressed at a later time because of a number of unknown factors including the timing and location of the movement of work out of the Forest Park facility.*** At the union urging, however, the parties have since discussed the issues surrounding the closing and reached a tentative agreement on the terms of a new Facility Closure agreement. In line with the Parties' bargaining ground rules discussed at the opening of these collective bargaining sessions, the tentative agreement on the facility closure is subject to and contingent upon the parties reaching agreement on the terms of a renewal collective bargaining agreement."

Exhibit GC-18 (Emphasis added); Tr. 202.

- Mr. Huddleston vociferously complains about the Company's announcement of full consolidation of DFW Metroplex operations and his not being told by Respondent that it is carrying out the terms of the 2015 Shutdown Agreement. Yet, his committeemen informed him of the full consolidation announcement immediately after it was made. CP Brief, p. Yet more, Huddleston soon thereafter entered into an agreement with the Company to retain stewards and committeemen at the Forrest Park location until all employees transferred out of the facility. Respondent's Exhibit 9. Charging Party was well aware of the consolidation plan and claims to the contrary are specious.

2. The Encompassing Terms of the 2015 Shutdown Agreement.

The negotiations in 2015 were part of a renewal agreement collective bargaining. The Company specifically warned Mr. Huddleston that completing the 2015 Shutdown Agreement was premature specifically because the Company did not know where the Forest Park work was going to go. But Huddleston persisted. As agreed to and executed, the 2015 Shutdown Agreement clearly reflects that it is the contractual instrument that pertains through the ultimate shutdown of the Forest Park location:

“Below is the agreement between Dallas Airmotive Inc. and the International Association of Machinists and Aerospace Workers, District 776, regarding the transition of bargaining unit work out of the Forest Park location ***between now and complete facility closure.***”

Joint Exhibit 25 (Emphasis added). For employees transferred further to its terms, the 2015 Shutdown Agreement goes on to set wages and compensation, health and welfare benefits, sick pay, holidays, vacation, and 401(k) benefits. It then mandates: “**All other policies, practices, and procedures at the location where the work will move will apply.**” *Id.* Concerning the terms of the 2015 Shutdown Agreement and its effects, Huddleston’s feigned ignorance of its terms and impact defies credulity.

While Charging Party seeks to minimize the import of the 2015 Shutdown Agreement, the union got what it bargained for. Forest Park employees were transferred to a DFW Metroplex location where that location’s terms and conditions of employment were applied. Charging Party should not now be heard complaining about Respondent’s conduct. Respondent applied the terms

of the agreement the union demanded of it. The union's chief negotiator's testimony aside, the 2015 Shutdown Agreement spelled out exactly how the transfer of employees would occur and the terms and conditions that would apply upon transfer.

3. Until the Summer of 2016, Respondent Did Not Decide Where Forest Park Employees Would Move.

Charging Party reiterates purported facts, over numerous pages, detailing alleged events and statements occurring before the 2015 Shutdown Agreement was negotiated and Respondent's subsequent announcement in 2016 of a full consolidation into DFW Center. CP Brief, pp. 10-16. The only relevant part of that garrulous detail is that Respondent was going to shut down Forest Park. But Respondent did not know where the Forrest Park work and associated employees would go.

As quoted by Charging Party, the Administrative Law Judge found that "at the time of the March 2015 negotiations, the Company "was not clear on what might happen to the Forrest Park employees." CP Brief, p. 17. In quoting Respondent's former Vice President of Operations, Nandu Madireddi, Charging Party highlights Respondent's uncertainty over where the Forest Park work would move and why the Respondent could not, absent that knowledge, agree to recognize the union at the new location: "Madireddi represented to the IAM that Airmotive could not agree to the proposed language because the employer's plans were in a state of flux and management did not know where the unit would be located in the future." CP Brief, p. 45. The answer to that question - where the Forest Park bargaining unit would be moved to - was not decided until 2016. That is when Respondent made the decision to move all work to

DFW Center. The decision was then announced to the workforce at all of Respondent's facilities – there would be full consolidation of all facilities to DFW Center.

During the midst of the 2015 renewal negotiations, without any decision having been made where the Forest Park work would be moved, the union persisted in its demands to negotiate and come to terms on the 2015 Shutdown Agreement. Respondent resisted, but to no avail. A shutdown agreement was reached. No negative inferences whatsoever should be drawn against Respondent because it subsequently made a decision about the consolidation of its operations and applied the terms of the negotiated 2015 Shutdown Agreement -- an agreement that specifically introduced itself as one that would be applicable through the closing of the Forest Park facility:

Below is the agreement between Dallas Airmotive Inc. and the International Association of Machinists and Aerospace Workers, District 776, regarding the transition of bargaining unit work out of the Forest Park location ***between now and complete facility closure***.

Joint Exhibit 25 (Emphasis added). The only proper inference to be drawn is that Charging Party got what it bargained for; no more, no less.

4. Charging Party's Unfounded Reliance on the 40% Rule.

In finally turning to the legal issues in Answering Respondent's Exceptions, Charging Party urges the application of the substantial percentage (40%) test set forth in *Harte & Co.*, 278 NLRB 947 (1986) and *Rock Bottom Stores, Inc.*, 312 NLRB 400 (1993) enfd. 51 F3d 366 (2nd Cir. 1995). Both cited cases involved the relocation of a single bargaining unit to a new location and an existing and ongoing collective bargaining agreement. Neither case involved a bargained for shutdown agreement or,

more important, the consolidation of multiple work sites into another location.

In the instant case and given the background, the substantial percentage test urged by Charging Party and relied on by the Administrative Law Judge is simply not applicable or appropriate. This is not Forest Park employees being unilaterally moved by Respondent to a new location without input from the union. Rather, the parties were well aware that Forest Park employees were going to be moved to another location within the DFW Metroplex. The parties negotiated over that movement of work out of Forrest Park. They negotiated over the effects of that move and the shutdown of the Forest Park facility. They also generally discussed where the Forest Park work might move. At that time, all Respondent could commit to was keeping the work in the DFW Metroplex; and, Respondent's DFW Metroplex locations were Heritage Park, Love Field and the ongoing construction of the new DFW Center. It has never been disputed that the work would be moved to another location in the Metroplex. And that is what the 2015 Shutdown Agreement contemplated. Hence, the instant matter is not a simple relocation case like *Harte* and *Rock Bottom*.

Applying a 40% test to deny Respondent's unrepresented employees consolidated from the Heritage Park and Love Field facilities (and employees hired directly into DFW Center) the right to exercise their explicit statutory rights based upon a less than majority standard would be repugnant to the ACT. Rather, the employees at the DFW Center should be allowed the right to exercise free choice on the most important of issues.

5. Without Underlying Support, Charging Party Urges that the Administrative Law Judge's Finding of "Substantial Completion" of the Consolidation is Appropriate. It is not.

Like Counsel for General Counsel, Charging Party is staunchly supportive of the Administrative Law Judge's finding that the consolidation of Respondent's operations was "substantially complete" on the date of the Union's demand for recognition. That timing is only an expedient and convenient launching point to a results oriented , erroneous outcome. Along the way, the path to the outcome is unburdened by any substantive and truthful evaluation of the complexity of Respondent's consolidation effort. That effort required the bringing together of multiple lines of engine overhaul capability, moving and aligning support departments and being capable of reproducing and finally testing airworthy jet engines. Once all the product lines, support departments and engine test capability had been moved, the consolidation was substantially complete, and the employees from the Forest Park bargaining unit did not make up a majority of employees. Any finding that the date of Charging Party's demand for recognition is somehow related to substantial completion of the consolidation is fortuitous and a first step towards stripping away the majority's rights under the ACT.

6. Charging Party Seeks to Cast Doubt on the 2015 Shutdown Agreement, and Fails.

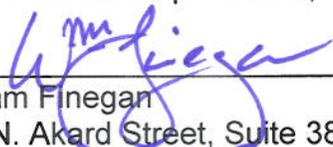
Charging Party attempts to argue (wholly unrelated to any of Respondent's Exceptions or arguments) that the negotiations underlying the 2015 Shutdown Agreement were in some way flawed or improperly thrust upon Charging Party by Respondent. Charging Party asserts, relying again on Mr. Huddleston's peculiar testimony, that "the Company drafted and presented the document to the union

representatives together with the employer's best and final offer regarding the new CBA ... [and] None of the unions ideas, suggestions, or requests were incorporated in the 2015 Closure Agreement." CP Brief, p. 18. Remarkably, the bargaining minutes reflect the contrary; Respondent and Charging Party did negotiate substantive terms of the 2015 Shutdown Agreement . See Respondent Exhibits 2 through 8. These are bargaining minutes created at or near the time of the actual negotiations, copies of which were provided to the union. Further, the 2015 Shutdown Agreement followed in form what had been negotiated one year earlier in the 2014 Shutdown Agreement. In neither case did the union file an 8(a)(5) charge claiming there was bad faith by Respondent in the negotiations. That is because Charging Party, through Mr. Huddleston, had ample opportunity to negotiate terms of the closing agreements with Respondent. He signed the Shutdown Agreements. Then, Huddleston presented the 2015 Shutdown Agreement to his membership and got it ratified. Charging Party's effort seeks to cast doubt upon an agreement they themselves forced through the process, with Respondent pushing back for delay because no decision had been made on where the Forest Park work would be moved. Now, Charging Party cries foul that the decision was made to move the work to DFW Center. Charging Party has waived its right to complain of the 2015 Shutdown Agreement's terms, its effects and by its nature dictates rejection of the underlying decision. With a majority of non-Forest Park employees working at DFW Center, the ACT's explicit protections of employee choice cries out for the dismissal of this case.

Dated this 19th day of April 2019.

Submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served this
19th day of April, 2019, to all counsel of record via electronic filing and via email.

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