

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

DALLAS AIRMOTIVE, INC.,

Respondent

and

Case 16-CA-192780

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO, DISTRICT
LODGE 776,**

Charging Party

**CHARGING PARTY'S MOTION TO STRIKE IN PART *COUNSEL FOR THE
GENERAL COUNSEL'S CROSS EXCEPTIONS AND BRIEF IN SUPPORT TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION*, AND SUPPORTING BRIEF**

International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 776 (*IAM*), Charging Party, hereby moves the Board to strike certain portions of *Counsel for the General Counsel's Cross Exceptions and Brief in Support to the Administrative Law Judge's Decision (General Counsel's Brief or GC Brief)*, which was filed with the Board on April 5, 2019.

1. Administrative Law Judge Sharon Levinson Steckler issued her *Decision and Order* (JD-10-19) (*ALJD*) on January 25, 2019. This matter is pending before the Board on exceptions to Judge Steckler's *Decision* filed by Respondent and cross-exceptions filed by both the General Counsel and Charging Party.

2. Although the General Counsel lodges four cross-exceptions to the *ALJD*, most of the argument set forth in the *GC Brief* is devoted to urging the Board to modify or overturn extant law as set forth in *Lincoln Lutheran* to find that dues checkoff agreements should be analyzed under a contractual standard rather than under the *clear and unmistakable* standard applicable to

the waiver of statutory rights under *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983). *See, e.g.*, GC Brief at 9-17. The General Counsel’s argument on this point relates to one of the General Counsel’s Cross-Exceptions, and the IAM will address that argument in its answering brief to the Counsel for the General Counsel’s Cross-Exceptions.

3. However, the IAM objects to and moves to strike all portions of the General Counsel’s Brief that relate to the General Counsel’s request to the Board to “also reconsider employee revocation of [dues] checkoff authority post contract expiration,” an issue that the General Counsel readily admits is not even at issue in this case. *See* GC Brief at page 8 (“**Although not specifically an issue in the case**, the Board should also reconsider current law regarding employee revocation of checkoff authorization after contract expiration.”) (Emphasis added.) Moreover, this issue is outside the bounds of any exception or cross-exception filed in this case, including the General Counsel’s own four cross-exceptions, and was also not made part of the General Counsel’s *Complaint*. *See* Ex. GC-1(c) (General Counsel’s *Complaint*).

4. By including argument on this extraneous and irrelevant point in its Brief, the General Counsel is in violation of Rule 102.46(a)(2), (c) of the NLRB’s Rules and Regulations, which provide that a brief in support of a cross-exception “must contain only matter that is included with the scope of the exceptions [or cross-exceptions].”

5. Accordingly, the IAM requests that the Board enter an order striking those portions of the General Counsel’s Brief that specifically pertain to the extraneous and irrelevant issue of standards for dues checkoff authorizations post-contract expiration including, without limitation, the following portions of the General Counsel’s Brief: (1) the first full paragraph on page 11 and (2) the entirety of Section C(iii) on page 16.

6. The Counsel for the General Counsel and Respondent oppose this motion to strike.

7. Wherefore, for the foregoing reasons, the Charging Party respectfully requests that the Board partially strike the General Counsel's Brief as requested herein, and that Charging Party be awarded such other and further relief as to which it may be justly entitled.

Dated May 16, 2019.

Respectfully submitted,

/s/Rod Tanner

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Certificate of Conference

On May 15, 2019, the undersigned counsel for Charging Party conferred with Linda Reeder, Counsel for the General Counsel, regarding the foregoing motion to strike. Ms. Reeder stated that the General Counsel opposes the motion.

On May 16, 2019, the undersigned counsel for Charging Party conferred with William Finegan, Counsel for Respondent, regarding the motion to strike. Mr. Finegan stated that Respondent also opposes the motion.

/s/ Rod Tanner

Rod Tanner

Certificate of Service

The undersigned attorney for the Charging Party certifies that on May 16, 2019, he served a copy of the foregoing *Charging Party's Motion to Strike in Part Counsel for the General Counsel's Cross Exceptions and Brief in Support to the Administrative Law Judge's Decision, and Supporting Brief* on the attorneys listed below via electronic filing and e-mail:

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/s/Rod Tanner

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