

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

**RESPONDENT'S ANSWERING BRIEF TO  
CHARGING PARTY'S CROSS EXCEPTIONS AND BRIEF  
TO ADMINISTRATIVE LAW JUDGE'S DECISION**

Arguing that it was somehow hood winked into entering the 2015 Closure Agreement, Charging Party relies on rank speculation, a mischaracterization of facts and a refusal to acknowledge that the underlying collective bargaining agreement went away with the closing of the Forest Park facility. Charging Party's desire for the collective bargaining agreement to somehow survive the explicit terms of the bargained for 2015 Closure Agreement is myopic and without basis in law or fact.

**I.**

**The 2015 Closure Agreement is Controlling –  
The Collective Bargaining Agreement Has Passed**

Similar to Counsel for General Counsel, Charging Party's cross exceptions asks the Board to disregard the parties' 2015 Closure Agreement and resurrect a variety of terms

from the collective bargaining agreement of the closed facility. That request requires the bargained for shutdown agreement be ignored. The request is unfounded.

Charging Party also seeks a specific remedy based upon the same argument – that the dues checkoff in that foregone collective bargaining agreement be enforced and Respondent remit union dues on behalf of the former bargaining unit employees. Charging Party's position is at odds with Counsel for General Counsel, however, in that it seeks the payment of dues beyond the explicit expiration date of the collective bargaining agreement. Charging Party over reaches on a remedy that is, in the first instance, wholly out of reach. In light of the 2015 Closure Agreement, Charging Party's cross exceptions are void of merit and must be rejected.

Like Counsel for General Counsel, Charging Party is similarly forced to maneuver its way around the 2015 Closure Agreement so it can attempt to seek a remedy under the collective bargaining agreement. In addition to making similar arguments, Charging Party adds that the 2015 Closure Agreement was somehow infected with deception. That issue was previously asserted by Charging Party in the form of an unfair labor practice charge asserting fraud. It was properly dismissed by Region 16. It also ignores the fact that Respondent plead with Charging Party to delay negotiations over the 2015 Closure Agreement until it knew where the Forest Park work would be moved. See GC Ex. 18. Now, Charging Party is forced to conjure up an excuse for its deliberate negotiations in the face of such uncertainty. The 2015 Closure Agreement was properly agreed to and its terms cannot now be ignored.

## II.

### **Mischaracterization of Facts and Rank Speculation**

In its efforts to end run the 2015 Closure Agreement, Charging Party relies on gross speculation and plays fast and loose with the facts and the record. Its Statement of Facts (pages 7 through 37) is riddled with issues. At various places, its allegations are without proper reference to the record or the record simply does not support the statements asserted. Without regular checking of its citations it is difficult if not impossible to decipher what is grounded in the record and what is not. Its Statement of Facts must either be disregarded or, at a minimum, treated with significant suspicion.

Here are just a few examples:

- CP Brief at Page 13: "In an all hands meeting held in March or April 2014, Allen announced that the Company had found a site at the DFW Airport that would house the test cells and the Rotorcraft Center of Excellence. Tr. 242."

Charging Party's statement is both inaccurate and misleading. Looking to the text of the transcript at page 242, the purported statement was made in 2015, not 2014. Further, Charging Party cites to this statement as if to contradict the testimony of Mr. Allen cited in the immediately prior sentence of their brief, in which Mr. Allen stated that Respondent did not know where the Rolls Royce line at Forest Park would be moved. That was true in 2014. It was also true when the parties negotiated the 2015 Closure Agreement. See Respondent's Brief in Support of Exceptions, pages 13-14. It was not until a later date, well after the 2015 Closure Agreement was finalized, that DFW Center was reconfigured to accommodate a consolidation of all of Respondent's DFW

Metroplex sites and the decision of full consolidation was made and announced. See ALJ Decision, page 11, lines 30-34.

- CP Brief at Page 14: “Since Airmotive had spent a substantial amount of money to renovate Love Field, the Union Negotiating Committee understood that unit employees at Forest Park would be divided into separate groups and assigned to Love Field and Heritage Park, and that all transferred employees would remain at those facilities. Tr. 137”

Page 137 of the transcript has nothing to do with the above statement.

- CP Brief at page 17: “...Madireddi had promised on March 3 “to keep Lodge 776 apprised as events unfolded.” JD 6:18-19, 46-50.”

The referenced cite to the Administrative Law Judge’s decision does not contain the quote nor the purported promise by Madireddi, although the quote may be in another part of the Decision. What the ALJ did find in the cited portion of the Decision is “What became apparent in the negotiations, Respondent was not clear on what might happen to the Forest Park employees.” Id. That appearance of lack of clarity concerned what might happen to Forest Park employees upon the closing of Forest Park. That lack of information was specifically made clear to the union as reflected in the communication to employees on the ratification vote. See supra, page 2; GC Ex. 18. The fact is that at the time of those 2015 negotiations, no decision had been made by Respondent regarding where the Forest Park would go. That is why Respondent urged the union to hold off on negotiating the closure agreement until after a decision had been made.

- CP Brief at Page 17: “When the IAM learned during contract negotiations that the Company acquired land for the new DFW Center and that it would close Forest Park, the Union representatives demanded to bargain over the closure as part of the collective bargaining negotiations. JD 6:30-31; Tr. 177”

Again, the Decision and record reference do not support Charging Party's statement. That statement, however, makes it clear that the union bargaining committee linked the new DFW Center and the closure of the Forest Park facility. It then defies logic for Charging Party to go on to argue throughout the remainder of its brief that the union somehow was misled into entering into the 2015 Closure Agreement. They heard about the new DFW Center which made them demand bargaining over the effects of the closure of Forest Park! Charging Party's cite is bad and its argument is internally flawed.

- CP Brief at Page 18: "None of the Union's ideas, suggestions, or requests were incorporated in the 2015 Closure Agreement. Tr. 178-79."

The 2015 Closure Agreement is very similar to the 2014 Closure Agreement negotiated one year earlier. See Joint Exhibit 25 and GC Exhibit 13. Charging Party's statement about Mr. Huddleston's failures in bargaining is defied by his testimony on the pages following those cited. He admitted to asking questions in bargaining. Tr. 180. He was allowed to raise any subjects during the bargaining. Tr. 201. He admitted to bargaining over layoffs and severance. Tr. 180. Huddleston admitted to full participation in the bargaining process over the 2015 Closure Agreement. Tr. 201. He presented the closure agreement to unit members for ratification. Tr. 201-203. He signed the 2015 Closure Agreement. Joint Exhibit 25. To state that none of the union's ideas, suggestions, or requests were part of the agreement is disingenuous, at best.

- CP Brief at Page 19: "Had Black known that Airmotive was planning to relocate the entire bargaining unit from Forest Park to a single new location, rather than disburse the employees and work operations to multiple locations, he would not

have instructed Huddleston to engage in effects bargaining with the employer. Tr. 59-60.”<sup>1</sup>

Once again, the cited transcript pages contain no testimony by Mr. Black that has anything to do with Charging Party’s statement. More so, the statement is meaningless. Respondent told the union during bargaining that it had not made a decision about where the Forest Park work would be moving. It also told them that negotiations over the 2015 Closure agreement should be delayed until it had made that decision. But, the Union persisted in negotiating the closure agreement. What Mr. Black may have done differently (apparently upon the premise that the union negotiating team should have done things differently by waiting until they had good information upon which to bargain) is irrelevant, meaningless and rank speculation. Hence, the cite is bad and the testimony irrelevant.

- CP Brief at Page 20: “Black Reviewed the 2015 Closure Agreement before it was executed, and he understood its reference to “other facilities in the DFW Metroplex” to be a reference to the two existing DFW area locations, Heritage Park and Love Field. Tr. 61-64”

Having not been in attendance at any of the negotiations in 2015, Charging Party relies on Mr. Black’s further rank speculation as to what meaning to give to the applicable Closure Agreement. The statement simply has no relevance and Mr. Black was in no position to offer any proper testimony on the issue. The statement means what it says. At the outset of negotiations, Charging Party knew about the DFW Center facility. The bargaining committee even toured the facility during the 2015 negotiations.

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<sup>1</sup> Mr. Black is Charging Party’s President and Directing Business Agent. Tr. 41. He was not at the bargaining table during the 2015 negotiations and never saw the 2015 Closure Agreement until after it was agreed to by the union.. Tr. 62-63.

Black too would have known about DFW Center had he been at those negotiations. But he was not there. His speculation as to the meaning of the terms of the 2015 Closure agreement are pure conjecture.

- CP Brief at Page 33: “Black further stated that Airmotive had not relocated any non-union operations to the DFW Center [....] Ex. GC-4.”

This referenced excerpt from the union’s letter demanding recognition further displays Mr. Black’s lack of factual knowledge of this matter. As found by the Administrative Law Judge, employees from Respondent’s Neosho, Missouri and its non-union Grapevine facility were the first to move to DFW Center. ALJ Decision page 10:19-23. Charging Party’s unnecessary reference to a false statement by Mr. Black displays its desperation. The reference is simply not helpful and is misleading. Ultimately, it displays the unreliability of the Statement of Facts provided by Charging Party.

Charging Party’s Statement of Facts must be viewed with suspicion or disregarded altogether. The unfounded references to the transcript and Administrative Law Judge’s Decision create confusion and improper inferences. The facts should not be allowed to be blurred by such allegations, assertions made without foundation and based upon conjecture and baseless assumptions. Given the reliable facts in the record and the Administrative Law Judge’s Decision, Charging Party’s cross-exceptions must be dismissed.

### III.

#### **The 2015 Closure Agreement Established the Terms and Conditions at DFW Center**

Tracking Counsel for General Counsel's argument, Charging Party seeks to resuscitate the terms of the collective bargaining agreement that applied to the employees working at the Forest Park location. Further to the closure agreement negotiated by the parties, those CBA terms did not transfer to the DFW Center. Rather, under the 2015 Closure Agreement, the terms existing at the DFW Center were properly applied to all Forest Park employees who went to work at that facility. To apply any terms from the Forest Park collective bargaining agreement that were not specifically identified in the 2015 Closure Agreement is tantamount to creating obligations where none were bargained, where none were agreed. The operative provision in the 2015 Closure Agreement is clear and straight forward. It addressed wages and compensation, health and welfare benefits, sick pay, holidays, vacation, and 401(k) benefits. It specifically provided that, "**All other policies, practices, and procedures at the location where the work will move will apply.**" (Joint Exhibit - 25) (emphasis added).

Charging Party describes a litany of practices and procedures from the Forest Park collective bargaining agreement that it hopes will be applicable at DFW Center: job security, rules of conduct, discipline and discharge procedures, seniority, hours of work, shift schedules, overtime accrual and pay, vacation leave and pay, reporting and callback pay, temporary assignments, job selection, transfers, promotions, health and

safety, union dues checkoff, appointment, location and access of union representatives. CP Brief at page 37. Charging Party does not address how its hope to make such policies, practices and procedures apply to employees of DFW Center escapes the language of the 2015 Closure Agreement. That is because, it cannot. The terms of the 2015 Closure Agreement are direct, succinct and clear; the terms of the collective bargaining agreement are not applicable at DFW Center. Hence, Charging Party's cross-exception is without merit and must be denied.

#### IV.

#### **Union Dues are in the Same Boat, And that Boat has Sailed**

Charging Party excepts to the Administrative Law Judge's denial of the remedy of Respondent paying union dues that would have been deducted and remitted on behalf of the Forest Park employees who transferred to DFW Center. Judge Steckler found that the 2015 Closure Agreement precluded that remedy by finding:

...I agree that Respondent was within its rights to apply its terms and conditions of employment, already established at DFW Center, when the Forest Park bargaining unit relocated. The 2015 Closure Agreement was drafted with Lodge 776's consent and input. The documents reflect that the parties knew a number of contingencies, known and unknown, existed in 2015. The plain language of this agreement waives Lodge's 776's rights to apply the terms and conditions of the collective bargaining agreement. I therefore recommend dismissal of the unilateral changes allegation. ...

ALJ Decision, p. 29. Because the terms of the collective bargaining agreement, which included the dues checkoff provision, were superseded by the 2015 Closure Agreement, the dues remittitur remedy is not available.

Charging Party's brief also displays a chart of declining dues revenue for the union as employees were transferred out of Forest Park. While dramatic in form, it is not relevant given the circumstances of this case. In line with the collective bargaining agreement, Respondent continued to deduct and remit dues for those employees who remained at Forest Park. As they were transferred to DFW Center, the remittance of dues declined. The chart shows that Respondent was faithful to the terms of the collective bargaining throughout the transfer of employees until the shutdown of Forest Park. It followed the collective bargaining agreement for those employees working at Forest Park. The chart of declining dues has no other significance to this case.

Charging Party's case authority on payment of dues is not applicable to the instant matter given its specific facts and the existence of the 2015 Closure Agreement. In the only case cited that involved a transfer of employees to another site, *Waymouth Farms, Inc.* 324 NLRB 960 (1997), *enf'd. in part and denied in part*, 172 F.3d 598 (8<sup>th</sup> Cir. 1999) the case did not involve a consolidation of multiple facilities. More important, the case involved an employer who hid from the union pertinent facts about its acquisition of another facility followed by bargaining over the shutdown of the old facility (all while the new facility was kept secret). The *Waymouth Farms* shutdown agreement was wholly rejected by the Board as being fraudulently obtained, employees were ordered reinstated and back dues were ordered to be paid to the union.<sup>2</sup> All were appropriate given the facts of the employer's unconscionable conduct.

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<sup>2</sup> The Eighth Circuit upheld the Board's finding of bad faith bargaining and enforced its order that the employer negotiate a plant closing agreement. The court rejected, however, the Board's order requiring

Charging Party, contrary to Counsel for General Counsel, seeks payment of union dues past the termination date set forth in the collective bargaining agreement. That issue simply should not be reached. See Respondent's Answering Brief to Counsel for General Counsel's Cross Exceptions and Brief, pages 8-13. Neither of their arguments can survive the terms of the 2015 Closure Agreement to even broach the topic.

On the payment of dues issue generally, all other Board authority relied on by Charging Party involves an ongoing and applicable collective bargaining agreement that included a dues check-off provision.<sup>3</sup> See *Plymouth Court*, 341 NLRB 363 (2004) (Employer improperly rejected new collective bargaining agreement over which there was a dispute about vacation provision; agreement contained dues check-off clause); *W.J. Hollaway & Son*, 307 NLRB 487 (1992) (Employer unlawfully refused to apply collective bargaining agreement which contained dues check-off provision); *West Coast Cintas Corp.*, 291 NLRB 152 (1988) (Employer unlawfully stopped dues payments after de-authorization vote but before certification of results); *Ogle Protection Services*, 183 NLRB 682 (1970) (holding discriminatees' backpay award should be offset by dues to be remitted to union);

In the instant case, at the outset of renewal bargaining, Respondent informed Charging Party about the new facility being built on Dallas Fort Worth airport property.

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the parties bargain a new collective bargaining agreement because of the geographic limitation in the existing collective bargaining agreement at the closed facility.

<sup>3</sup> The one Supreme Court case cited by Charging Party, *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941), holds that the Board has authority to fashion proper make whole remedies under the ACT.

Apparently, according to Charging Party (infra, page 4) that very disclosure resulted in Charging Party demanding that the 2015 Closure Agreement be negotiated at the same time as the renewal collective bargaining agreement -- well before Respondent knew where the Forest Park work would be moved. Respondent told the union such bargaining was premature. But the union persisted. The agreement reached – the 2015 Closure Agreement – addressed applicable terms and conditions which did not include dues check-off. That closure agreement precludes both the remedy of dues payments by Respondent and the claimed interest on such dues.

## **V.**

### **Conclusion**

Further to the 2015 Closure Agreement, Respondent and Charging Party bargained the terms of the shutdown of Forest Park and the transfer of work and employees to another facility in the Dallas/Fort Worth Metroplex (DFW Metroplex). By its terms, the agreement was applicable through the closing of the Forest Park facility. Its terms also set forth the terms and conditions upon the employees' transfer to another DFW Metroplex facility. It encompassed wages and benefits and, all other policies, practices and procedures. It did not include dues check-off nor any of the other terms Charging Party wishes to be included in the remedy. The 2015 Closure Agreement precludes Charging Party's cross-exceptions and they must be rejected.

Dated this 20<sup>th</sup> day of May 2019.

Submitted by:

Munsch Hardt Kopf & Harr, PC

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served this 20<sup>th</sup> day of May, 2019, to all counsel of record via electronic filing and via email.

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*/s/ William P. Finegan*  
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