

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
OFFICE OF THE EXECUTIVE SECRETARY  
WASHINGTON, D.C.**

**LITTLEJOHN ELECTRICAL SOLUTIONS, LLC,**

**Respondent,**

**and**

**Case 16-CA-214170**

**INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, LOCAL  
UNION NO. 20,**

**Charging Party.**

**CHARGING PARTY’S BRIEF IN OPPOSITION TO  
EMPLOYER’S EXCEPTIONS AND BRIEF**

Charging Party, International Brotherhood of Electrical Workers, Local Union No. 20 (“the Union” or “IBEW Local 20”), hereby submits its Brief in Opposition to Employer’s Exceptions and Brief, and would respectfully show as follows:

**I. INTRODUCTION**

On August 20 and 21, 2018, a hearing was conducted in connection with this case in Fort Worth, Texas at the offices of the National Labor Relations Board, Region Sixteen, before Administrative Law Judge Robert A. Ringler. On March 4, 2019, Judge Ringler entered his Decision in this case. In his Decision, concluded that the Employer, Littlejohn Electrical Solutions, L.L.C., (“LES”) violated §8(a)(5) of the Act by (1) failing to recognize the Union, (2) repudiating and failing to comply with its obligations under the parties’ CBA, and (3) failing to reply to the Union’s January 26, 2018 information request. Based upon those cited violations of the Act, Judge Ringler ordered that “LES must recognize the Union as the limited exclusive collective-bargaining

representative of their Unit employees,” “commence assigning Unit work to qualified applicants from the Union’s hiring hall, and make Unit employees and hiring hall applicants whole for any loss of earnings and other benefits they may have suffered as a result of its unlawful conduct,” “make all the required [health, welfare, and pension] benefits contributions that have not been made since around February 27, 2017,” and provide the Union with the information that it requested in its information request. Decision at 10-11.

On May 1, 2019, LES filed Employer’s Exceptions to the Administrative Law Judge’s Findings, Decisions, and Recommendations and Employer’s Brief in Support of Exceptions to the Administrative Law Judge’s Findings, Decisions, and Recommendations. Throughout the Employer’s Brief, there are numerous “factual” references with no support in the record, alleged factual references that are directly counter to what LES claims them to be, and manipulations and mis-statements of the applicable law. This is certainly not surprising in light of Littlejohn’s lies and deceit that were on full display during the hearing in this case.

## **II. STATEMENT OF FACTS**

This case involves a train-wreck of a hustler who will do and say anything to get what he wants, no matter who he hurts along the way. Clinton Littlejohn agreed to comply with specific obligations set forth in writing by numerous entities related to the electrical contracting industry. Time after time, he not only failed to comply with such obligations, but manipulated and lied to multiple persons in a vast effort to cover-up his misdeeds. The hearing in this case systematically unpeeled the layers upon layers of deceit in which Littlejohn engaged. The hearing also convincingly established Littlejohn’s and LES’ blatant violations of their contractual obligations and utter disregard of our nation’s labor laws. As such, it is beyond dispute that LES is in violation of the NLRA on numerous grounds that will be addressed in this brief.

Littlejohn started his own company, Littlejohn Electrical Solutions (“LES”), while he was an apprentice in the North Texas Electrical Joint Apprenticeship and Training Committee program. The apprenticeship program, which is run by the Joint Apprenticeship and Training Committee (“JATC”), is a joint sponsorship between the National Electrical Contractors Association (“NECA”) and the International Brotherhood of Electrical Workers Local 20 (“IBEW 20”). The program provides schooling and on-the-job training which consists of referrals for participants.

As part of this apprentice program, students are required to read and acknowledge the apprentice agreement, the scholarship loan agreement, and other documents that contain the rules and policies that each student must abide by. The cardinal rule and ultimate requirement of the program is that an apprentice must work for a union signatory during and after completion of the program. If the apprentice chooses not to work for a union signatory, then that apprentice must repay the pro rata portion of the amount of the scholarship loan which allows an apprentice to attend the training program. In addition, students are required to take apprentice job referrals. If a student declines three referrals, then the apprentice director will have a meeting with the apprentice and committee to determine whether that apprentice shall remain in the program. The program's goal is to produce certified, competent union electricians who, in turn, will work for union contractors.

Kim Allen, the executive director of the program, testified that Littlejohn was well aware of the program requirements and what it meant to be a union member working for a union contractor. In fact, Littlejohn executed two scholarship loan agreements that clearly outline the requirements of the program and detail what a breach of the agreement meant. *GC Exs. 4A & 4B.*

When Littlejohn started his own electrical company, he was performing the work himself and declining job referrals from the apprentice program. As testimony from Kim Allen showed,

when Allen approached Littlejohn to inquire about his failure to take any referrals, Littlejohn lied and made excuses for his inaction until he could no longer hide his business venture. Littlejohn ultimately admitted what he was doing, and told Allen about his business. This was clearly a breach of his written obligations because Littlejohn's company was not a union contractor. Because Littlejohn wanted to remain in the program and graduate, he sought help from the Union. After several conversations and meetings, the Union informed Littlejohn that he could remain in the apprenticeship program if his company became a union contractor. Union and NECA officials then explained the steps that he needed to take to become a union contractor, such as getting a surety bond and signing a Letter of Assent.

Thereafter, Littlejohn was extremely fortunate that the apprenticeship committee voted to allow him to continue his education and graduate from the program even though he had violated the scholarship loan agreement by working for himself as a non-union signatory. To comply with his part of the deal to remain in the apprenticeship program, Littlejohn's company entered into an agreement with IBEW Local 20 and NECA. Littlejohn signed the Letter of Assent on February 23, 2017, thereby assigning his bargaining rights to NECA and agreeing to comply with the collective bargaining agreement between NECA and the Union. *See GC Ex. 2.*

Littlejohn is now disingenuously arguing in this case that he was clueless when he signed the Letter of Assent and was unaware that a collective bargaining agreement existed which details the Union's referral rules and other provisions that govern the parties' bargaining and relationship. As a result of Littlejohn's feigned ignorance, he contends that the executed Letter of Assent is void and unenforceable. In addition, Littlejohn maintains that he was completely unaware of the collective bargaining agreement. Interestingly, the collective bargaining agreement, which is

specifically referenced in the Letter of Assent, is the same collective bargaining agreement that all apprentices receive when they become an apprentice.

The same collective bargaining agreement dictates the terms and pay that apprentices will receive based on their experience and skills, so apprentices are well aware of the collective bargaining agreement. Moreover, several other documents, such as an employer referral sheet and surety bond paperwork, all reference the collective bargaining agreement. Thus, it is simply outside the realm of possibility that Littlejohn was not aware of the collective bargaining agreement.

The evidence presented during this hearing further showed that Littlejohn voluntarily executed that Letter of Assent so he could graduate from the apprentice program. On his own accord, he sought the help of the Union and agreed to the terms laid out by the Union. As the evidence clearly showed, no one from the Union forced Littlejohn to remain in the program or to sign the Letter of Assent.

Littlejohn could have easily walked away from the apprenticeship program and the Union, and still could have worked in the electrical industry if he had paid a portion of the scholarship loan agreement money back. As a result of voluntarily signing the Letter of Assent, Littlejohn is bound to the existing collective bargaining agreement which runs from December 1, 2016 to November 30, 2019. *See GC Ex. 6.*

Despite being bound to the collective bargaining agreement, numerous witnesses testified regarding Littlejohn's failure to adhere to the collective bargaining agreement by hiring outside of the referral procedure in both 2017 and 2018. This testimony did not just come from Union witnesses, but from Littlejohn himself, who admitted to hiring outside of the hall.

Testimony from Union organizers Adrian Cepeda and Cesar Martinez demonstrated that the Union learned in January 2018 that Littlejohn was hiring outside of the hall. When the Union and NECA approached Littlejohn about the issue, Littlejohn stonewalled, remained evasive, and continued to refuse to adhere to the collective bargaining agreement.

In response to Littlejohn hiring outside of the referral procedure, Littlejohn contended that he terminated the Letter of Assent by providing the Union with a letter on January 26, 2018. That date, however, is well after he had already refused to recognize the union and failed to adhere to the collective bargaining agreement. Moreover, as will be shown in the Arguments and Authorities section of this brief, Littlejohn's attempt at revocation was legally insufficient. Therefore, Littlejohn is not relieved of his bargaining obligations with the Union and thus, is still bound to the CBA.

Additionally, when the Union learned that Littlejohn was hiring outside of the hall, it requested relevant and necessary information. The Union requested five items. Littlejohn ignored the Union's request until after the ULP charge was filed and then only attempted to provide some information. As such, the Union's request still remains outstanding.

Under these circumstances, Littlejohn has violated the Act by breaching his obligations under the collective bargaining agreement, failing and refusing to recognize the union, failing and refusing to bargain, and failing and refusing to furnish the Union with information, as well as delay in providing that information.

### **III. ARGUMENT AND AUTHORITIES**

#### **A. The Construction Industry Under the National Labor Relations Act.**

The NLRB did not begin asserting its jurisdiction over the construction industry until 1948, 13 years after the enactment of the Wagner Act. In subsequent years, it became apparent that the

Act's provisions, both in the representation and the unfair labor practice areas, did not "fit" particularly well with the way employment relations were created and maintained in the construction industry. Thus, several of the 1959 amendments to the Act dealt specifically with the construction industry, and others have particular relevance to that industry. In addition, the Board itself has interpreted the Act, including the pre-1959 provisions, and its own procedures in different ways in order to accommodate the particular circumstances of construction industry employment. Section 8(a)(2) of the Act prohibits an employer from recognizing and entering into a collective bargaining agreement with a union that does not represent a majority of the employer's employees in an appropriate unit. Correspondingly, the Board, with court approval, has determined that it is a violation of Section 8(b)(1)(A) for a union which does not represent a majority to accept recognition from and enter into an agreement with an employer. *See Ladies' Garment Workers (Bernhard-Altmann Texas Corp.) v. NLRB*, 366 U.S. 731 (1961); *Haddon House Food Products*, 269 NLRB 338 (1984), *enfd.* 764 F.2d 182 (3d Cir. 1985).

In the construction industry, however, even before the Act was passed, employers have had a longstanding practice of entering into agreements with unions even before any employees are hired, before the union has even had a chance to establish that it represents a majority of the employer's employees. These so-called "prehire" agreements became the norm in the construction industry for a number of reasons. Employment in the construction industry is usually not permanent, but is rather temporary and often short-term, depending on the nature of the particular construction project involved, so it is often just not practical to wait until after employees are hired to begin collective bargaining. In addition, employers obtain their jobs by bidding, and they must know their labor costs before they bid on a job, which is also before they have hired any employees. Finally, construction employers must have an available supply of skilled labor which is ready for

quick referral to their jobs. *See Building and Construction Trades Council of the Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218, 113 S.Ct. 1190, 142 LRRM 2649, 2654 (1993).

Recognizing these unique needs, as well as the historic practice of construction employers and unions to enter into prehire agreements, Congress enacted Section 8(f) of the Act in 1959. Section 8(f) provides that it shall not be an unfair labor practice for an employer engaged primarily in the construction industry to enter into an agreement with a union covering its construction employees, simply because the union has not established “majority status” as otherwise required by Section 9 of the Act; the agreement requires membership in the union after the seventh day of employment (as opposed to the thirtieth day, as authorized for non-construction industry employment by the proviso to Section 8(a)(3) of the Act); the agreement provides for referral of employees from a union hiring hall; or the agreement provides for minimum training or experience requirements for employment. A proviso to Section 8(f) states, however, that an agreement authorized by its terms shall not “bar” a petition for an election under Section 9 of the Act; thus, either party may petition for an election during the term of such a “prehire” agreement authorized by Section 8(f).

Section 8(f) thus fundamentally alters the statutory scheme as it applies to the establishment and maintenance of collective bargaining relationships in the construction industry. It allows construction industry employers and unions to enter into agreements regardless of whether it has been established that the union represents a majority of the employees in an appropriate unit; such an agreement would otherwise subject the employer and the union to liability under Sections 8(a)(2) and 8(b)(1)(A). After the enactment of Section 8(f), however, the question remained of whether the obligation to adhere to such a “prehire” agreement would be enforceable under Section

8(a)(5) of the Act.

In the non-construction industry, a certified or recognized union enjoys an irrebuttable presumption of majority status during the term of a collective bargaining agreement, and thus if the employer withdraws recognition and repudiates the agreement during the term, the employer violates Section 8(a)(5) of the Act. *See Burger Pits, Inc., 273 NLRB 1001, 1002 (1984), enfd. 785 F.2d 797 (9th Cir. 1986)*. Section 8(a)(5), however, provides that an employer's duty to bargain in good faith with the representative of its employees is "subject to the provisions of Section 9(a)," which provides that a representative for purposes of collective bargaining shall be designated or selected by a majority of the employer's employees in an appropriate unit. Thus, the statute contemplates that the imposition of enforceable contract obligations by virtue of Section 8(a)(5) is contingent on the signatory union being designated or selected by the majority of the employer's employees. By definition, however, an agreement authorized by Section 8(f) is entered into by a union which has not demonstrated that it represents a majority of the construction industry employer's employees.

The Board addressed the enforceability of collective bargaining agreements authorized by Section 8(f), along with other related issues, in *John Deklewa and Sons, 282 NLRB 1375 (1987), enfd. sub. nom. Iron Workers Local 3 v. NLRB, 843 F.2d 770 (3d Cir. 1988)*. In *Deklewa*, the Board held that it would accord a bargaining relationship and collective bargaining agreement established under Section 8(f) limited protections under Section 8(a)(5) of the Act. *Id. at 1387*. Thus, during the term of a contract authorized by Section 8(f), neither party is allowed to repudiate the agreement without running afoul of either Section 8(a)(5) or Section 8(b)(3).

**B. Duress is Not a Valid Defense in This Case.**

One of the main defenses that Littlejohn tried to bring forward in this case is the defense

that he signed the Letter of Assent under duress. The concept of “duress” has specific legal meanings in the context of contract formation, and is certainly not met by merely saying that someone decided to sign a contract in order to stay in the apprenticeship program and avoid paying back money that funded his schooling.

When the will of a party is overcome by “duress,” the law will not enforce the resulting agreement. “Duress” precludes parties to a contract from achieving mutual assent. *Tower Contract Co., Inc. of Tex. v. Burden Bros., Inc.*, 482 S.W.2d 330, 335 (Tex. Civ. App.—Dallas 1972, writ *ref’d n.r.e.*). Duress requires unlawful conduct or a threat of unlawful conduct by a party that is of such a character as to destroy the other party’s exercise of free will and judgment. *Lujan v. Navistar Financial Corp.*, 433 S.W.3d 699, 706–707 (Tex. App.—Houston [1st Dist.] 2014, no *pet.*); *Doe v. Catholic Diocese of El Paso*, 362 S.W.3d 707, 719 (Tex. App.—El Paso 2011, no *pet.*); *McCord v. Goode*, 308 S.W.3d 409, 413 (Tex. App.—Dallas 2010, no *pet.*). This threat must be imminent and the party must have no present means of protection. *McCord v. Goode*, 308 S.W.3d 409, 413 (Tex. App.—Dallas 2010, no *pet.*). Duress must be shown from the acts or conduct of the party accused of duress and not from the emotions of the purported victim. *McCord v. Goode*, 308 S.W.3d 409, 413 (Tex. App.—Dallas 2010, no *pet.*).

As stated above, the law on duress requires unlawful conduct or a threat of unlawful conduct by a party that is of such a character as to destroy the other party’s exercise of free will and judgment. The facts in this case do not remotely come close to showing that the Union engaged in any type of unlawful conduct or a threat of unlawful conduct.

When Littlejohn was caught employing nonunion employees and avoiding his obligations to the apprentice program and the Union, these entities had the right to remove him from the program and require him to repay the \$12,500 that was advanced by the Union to fund his

apprenticeship schooling. When the school and the Union came up with a deal that would allow him to stay in school and to continue to operate his business through the use of union-referred employees, Littlejohn voluntarily and freely signed the binding Letter of Assent agreement to get that done. There was not any duress of any kind brought by the Union in connection with this agreement. The Union did not engage in any unlawful activity or threat of unlawful activity at any time with respect to the Letter of Assent.

Littlejohn's duress defense was rightfully rejected by the ALJ in his Decision as follows:

For several reasons, I do not credit Littlejohn's contention that he was unaware of the CBA or that his LOA acceptance was the involuntary product of insurmountable duress. *First*, after having a JATC relationship with the Union dating back as far as 2011, it is implausible that he was unaware of the CBA. The testimony that he was repeatedly exposed to the CBA during his JATC training is persuasive and plausible. *Second*, it is unconvincing that Littlejohn was placed under such a high degree of duress that his acceptance of the LOA was rendered involuntary. The LOA was plainly written, and it is improbable Littlejohn, a relatively successful small business owner who could handle his own affairs, was left so traumatized that he was left unable to make rational decisions or understand the LOA. This testimony, very candidly, appeared to be a concocted effort to avoid his legal obligations. *Third*, Littlejohn's willingness to engage in other instances of deceitful conduct (e.g., stealing wire, surreptitiously creating LES in violation of his SLA, etc.) undercuts his overall credibility. *Finally*, Cepeda and Frentrup were generally credible and cooperative witnesses, with strong demeanors. In sum, I find that Littlejohn's signing of the LOA was knowing and voluntary, and that he was well-aware of the CBA and his obligations.

*Decision at 4-5.*

The ALJ's Decision in this case that there was no illegal duress is aptly supported by the evidence adduced at the hearing. As such, the Decision should be upheld and LES' exceptions to the Decision regarding duress should be denied.

**C. Ignorance of the Contents of the Letter of Assent is Not a Valid Defense in This Case.**

The other primary defense Littlejohn made in this case is that he simply did not know what

he agreed to when he signed the Letter of Assent. An aspect of this claim is that he had no knowledge of the NECA labor agreement that was referenced and incorporated in the Letter of Assent. There are multiple problems with this defense, both factually and legally.

From a factual standpoint, several witnesses testified that they discussed the NECA labor agreement with Littlejohn on multiple occasions and actually gave him a copy of it. Additionally, there is ample evidence of Littlejohn's compliance with the terms of the CBA by his referring nonunion employees to the Union shortly after signing the Letter of Assent and by his providing audit documents to NECA relating to amounts being taken out of employee paychecks to comply with the benefits portion of the CBA.

Even without these undisputed facts, ignorance of a signed document is not a valid legal defense under the law. A party's failure to read a portion of an agreement's provisions is not a defense to the enforcement of the agreement. *Satre v. Dommert*, 184 S.W.3d 893, 898 (Tex. App.—Beaumont 2006, no pet.). A party to a contract is presumed to have read and understood its provisions. *In re Green Tree Servicing LLC*, 275 S.W.3d 592, 599 (Tex. App.—Texarkana 2008, no pet.); *Wee Tots Pediatrics, P.A. Morohunfola*, 268 S.W.3d 784, 791 (Tex. App.—Forth Worth 2008, pet. denied); see *In re Int'l Profit Assocs.*, 286 S.W.3d 921, 923 (party that signs contract is presumed to know its contents, including documents specifically incorporated by reference). Unless one party's false representations about the content of the contract induced the other party to enter the contract, the parties are not excused from the consequences of failing to read the contract in its entirety. *Si Kyu Kim v. Harstan, Ltd.*, 286 S.W.3d 629, 634 (Tex. App.—El Paso 2009, pet. denied); *In re Green Tree Servicing LLC*, 275 S.W.3d 592, 599 (Tex. App.—Texarkana 2008, no pet.). Claims of belief that the provisions differed from those plainly set out in the contract are not acceptable [*In re Media Arts Group, Inc.*, 116 S.W.3d 900, 908 (Tex. App.—Houston [14th

*Dist.] 2003, no pet.)].*

Littlejohn signed the Letter of Assent. By that signature, he is presumed to have read and understood its provisions, including documents specifically incorporated by reference such as the NECA labor agreement. Thus, under Texas law, his cries of ignorance over what he signed are completely without merit.

The ALJ clearly recognized this fact in his Decision:

For several reasons, I do not credit Littlejohn's contention that he was unaware of the CBA or that his LOA acceptance was the involuntary product of insurmountable duress. *First*, after having a JATC relationship with the Union dating back as far as 2011, it is implausible that he was unaware of the CBA. The testimony that he was repeatedly exposed to the CBA during his JATC training is persuasive and plausible. *Second*, it is unconvincing that Littlejohn was placed under such a high degree of duress that his acceptance of the LOA was rendered involuntary. The LOA was plainly written, and it is improbable Littlejohn, a relatively successful small business owner who could handle his own affairs, was left so traumatized that he was left unable to make rational decisions or understand the LOA. This testimony, very candidly, appeared to be a concocted effort to avoid his legal obligations. *Third*, Littlejohn's willingness to engage in other instances of deceitful conduct (e.g., stealing wire, surreptitiously creating LES in violation of his SLA, etc.) undercuts his overall credibility. *Finally*, Cepeda and Frentrup were generally credible and cooperative witnesses, with strong demeanors. In sum, I find that Littlejohn's signing of the LOA was knowing and voluntary, and that he was well-aware of the CBA and his obligations.

*Decision at 4-5.*

The ALJ's Decision in this case that Littlejohn was well-aware of what he was signing when he signed the LOA and that he knew about the CBA and his obligations thereunder is aptly supported by the evidence adduced at the hearing. As such, the Decision should be upheld and LES' exceptions to the Decision regarding its obligations under the LOA and CBA should be denied.

**D. Littlejohn's Credibility is in Serious Doubt.**

**1. Generally.**

Littlejohn testified at length during the hearing, and showed his true colors of manipulation and untruthfulness in his interactions with apprentice school officials, Union officials, and NECA officials. Furthermore, there are citations to "facts" in LES' Brief that are simply and clearly untrue. This Brief will address the highlights of these lies and manipulations.

**2. Littlejohn's Falsehoods During the Hearing.**

Littlejohn started his non-union company in April 2016, yet did not notify the Union until almost a full year later in February 2017. *Tr. 158-59*. So for at least ten months, Littlejohn was (1) not taking apprentice referrals, and (2) secretly performing work and having others perform work outside of the union referral process.

Littlejohn stated on multiple occasions that he signed the Letter of Assent because he was "distracted" about not being able to finish school if he did not sign it, and that he did not know about the collective bargaining agreement that was referenced in the Letter of Assent. *Tr. 160*. Despite the testimony of multiple witnesses that the CBA was both discussed with him and given to him, Littlejohn had the audacity to testify under oath that he was not aware of the CBA and would not have signed the Letter of Assent had he known he would have to comply with the CBA. *Tr. 160-61*. Of course, even if his ridiculous testimony had an inkling of truth in it, he still could not talk his way out of the undisputed fact that the CBA is specifically referenced in the Letter of Assent. *GC Ex. 2*. Indeed, the Letter of Assent specifically states that his company "agrees to comply with, and be bound by, all of the provisions contained in said current and approved labor agreements." *Id.* Additionally, Littlejohn admitted that despite the fact that the CBA is referenced in the Letter of Assent that he signed, he never asked anyone about the CBA. *Tr. 161*.

Littlejohn stated that he signed the Letter of Assent because he was “distraught over school” and was “under duress,” yet he admitted on cross examination that in lieu of signing the Letter of Assent, he could have just walked away from the apprentice program. *Tr. 162*. Littlejohn clearly had other options, and made an informed choice to sign a binding contract with the Union. Littlejohn testified to his unhappiness with the Union in February 2017 for being put in the position of having to agree to the Letter of Assent so that he could remain in the apprentice program. *Tr. 163-64*. Yet four months later in June 2017, a news article quoted Littlejohn saying extremely favorable things about the Union and the apprentice program. *Tr. 164-65; GC Ex. 3*.

Littlejohn repeatedly testified to his ignorance of the terms of the CBA. Yet in the very beginning after he signed the Letter of Assent, he actually referred employees that he obtained outside of the Union referral process to the Union, which was one of the terms of the CBA. *Tr. 436-37*. Of course, it is undisputed that he later stopped referring employees to the Union, which is a violation of the Letter of Assent and CBA. To justify that illegal move, Littlejohn suddenly became an expert in the terms of the CBA when he claimed that the Union was not complying with the 48 hour clause of the CBA. *Tr. 437*. The true facts are that Littlejohn was never as stupid as he now claims he was regarding the CBA.

As was the case several times during his testimony during the hearing, Littlejohn was quick to put responsibility for his actions and inactions on others, including Union leadership, NECA leadership, the apprentice school director, and even his own lawyer. For example, Littlejohn testified that his attorney told him to secretly tape the meetings he had with the Union, NECA, and apprentice school officials. When asked about the appropriateness of secretly recording other persons, he merely stated that it was legal, without really addressing the real issue of whether that is an appropriate way to act with other persons. *Tr. 437-38*. Additionally, Littlejohn had no answer

to the testimony of Stephen Corley, the NECA official who was involved in the meetings with Littlejohn. Corley stated that he specifically asked Littlejohn if he was recording one of the meetings, and that Littlejohn directly answered that he was not. *Tr. 262-63*. That was an outright lie, as Littlejohn introduced the transcript of the recording of that meeting during this hearing.

As it turned out, the secret recordings that Littlejohn made of the meetings hurt only himself. Throughout this case, Littlejohn attempted to justify his actions of hiring non-union employees outside of the Union hiring hall process by repeatedly saying that the Union was not giving him workers. *Tr. 438*. The recordings, however, tell a very different story. At no time during any of these recorded meetings did Littlejohn make any type of statement or complaint that the Union was not referring him workers. *Tr. 438*. Similarly, the recordings conclusively prove that Littlejohn never made any statement during any of these meetings regarding not knowing anything about the CBA. *Tr. 439*. That is very telling in this case in which one of his main defenses is that he allegedly had no idea what was in the CBA.

In fact, Littlejohn's actions during this entire relationship with NECA and the Union shows that he was fully aware of his obligations under the CBA. This includes complying with the NECA audit with a listing of the amounts that were being deducted from employees' paychecks for all of the deductions required to be made pursuant to the CBA. *Tr. 439; GC Ex. 16*. To make matters even worse for Littlejohn's story that he did not know about the CBA, his own letter dated January 30, 2018 specifically references three different provisions of the CBA that the Union had allegedly violated. *Tr. 440-41; Respondent Ex. 18*.

Littlejohn's testimony took a weird turn when he was cross-examined regarding his signing of the Letter of Assent, which contained a reference to the NECA CBA:

Q. So when you signed a document that references another document, wouldn't an average person want to know what that other

document contained?

A. If they weren't impaired, yes.

Q. Were you drunk when you signed it?

A. No.

Q. Is that what you're saying?

A. I was emotional.

*Tr. 442-43.*

The overriding problem with that testimony is that there is no evidence that he was emotional when he signed the Letter of Assent. He may have been emotional in one of the meetings that he had recorded, but that was totally separate from the day he went in and signed the Letter of Assent. Even if he was "emotional" at the time he signed the Letter of Assent, that does not in any way mean that he was impaired. Additionally, at some point after he signed the Letter of Assent and after he was no longer "emotional," he never asked anyone about the NECA labor agreement. *Tr. 443.*

The recording of the January 24 meeting is also helpful to demonstrate that Littlejohn never made any of the challenges to the CBA that he is now making in this case. Much of the meeting involved the issue of Littlejohn being behind on his payments to NECA. *Tr. 444-45; Respondent Ex. 13.* Significantly, not once did Littlejohn dispute the enforceability of the CBA or the fact that he was not making payments. *Id.* He never stated that the CBA was unenforceable or that he had been under duress when he signed the Letter of Assent. *Id.* In fact, Littlejohn actually told Union and NECA officials that he was going to make payments, and actually wrote a check during the meeting. *Id.*

Towards the end of Littlejohn's cross examination, it was conclusively proved that he out and out lied directly to Karsten Frentrup during the January 24 meeting. Specifically, Frentrup directly asked Littlejohn "Do you have other guys we don't know about?" *Tr. 445; Respondent Ex. 13.* Littlejohn responded "No. It was just those two." *Id.* As disclosed in GC Ex. 14, There

were at least fifteen employees that were hired outside of the Union referral process. Once confronted with this evidence, Littlejohn reluctantly admitted on cross examination that there were way more than the two nonunion employees at the time he answered Frentrup's question. *Tr. 446*. Thus, there can be no doubt that Littlejohn was lying when he told everyone at the meeting that there were only two nonunion employees.

Lying seems to be a very consistent aspect of Littlejohn's mentality. In another meeting that Littlejohn secretly recorded, he made the following statement to Kim Allen:

....And Kim, I'm sorry I lied to you man. And I'm sorry I've been a r-fuckin' dick to you my whole apprenticeship, it was nothin' against you. It's embarrassing about stealing the wire, it really is....  
*Tr. 447, Respondent Ex. 5.*

In one fell swoop, Littlejohn admitted to a criminal act and to lying, and yet now wants the NLRB to believe his ridiculous defenses to the binding agreement that he voluntarily signed.

### **3. Littlejohn's Falsehoods In His Brief.**

On page 3 of LES' Brief, Littlejohn asserts that [Adrian] "Cepeda [a Union officer] also testified that the IBEW did not provide, or even offer, Mr. Littlejohn the LOA for inspection beforehand." What Littlejohn neglects to point out are the facts that the LOA is a one-page document that he looked at prior to signing it, and that he had no questions about its contents. *Tr. 52*.

On pages 3-4 of LES' Brief, Littlejohn asserts that he had to hire non-Union workers outside of the Union hiring hall process because the Union was not giving him workers. The evidence adduced at the hearing, however, tell a very different story. At no time during any of the surreptitiously-recorded meetings did Littlejohn make any type of statement or complaint to the Union officials that the Union was not referring him workers. *Tr. 438*. Similarly, the recordings conclusively prove that Littlejohn never made any statement during any of these meetings

regarding not knowing anything about the CBA, which is also a repeated assertion in Littlejohn's Brief. *See Tr. 439*. That is very telling in this case in which one of his main defenses is that he allegedly had no idea what was in the CBA.

One of the worst lies in his Brief relates to his unsupported contention that the Union knew that LES had a contract at the Toyota Music Factory development and was using non-Union employees in working that contract. *LES Brief, p. 4*. The transcript clearly shows that the Union agents, Cepeda and Martinez, who discovered that LES was working a job with non-Union employees, had no idea that LES was working that job prior to going out to that development:

1 Q So when you got to Toyota Music Factory, what did you  
2 notice?

3 A There was a lot of work going on, and we're going to  
4 different locations to pass out information, and then we  
5 ran into a restaurant. I believe it was Gloria's. And  
6 then we noticed it was Littlejohn Electric, and then he had  
7 some nonunion electricians there.

8 Q Okay. Did you speak to any of those employees?

9 A Yes, ma'am. I spoke with two guys.

10 Q Do you remember who they were?

11 A I believe one guy, the first guy I talked to, was  
12 named -- I can't really -- I might pronounce it wrong or  
13 something. His name is Carney, I believe.

14 Q Okay.

15 A And then Andrew was the other one.

16 Q Okay. And when you spoke to Carney, what did he tell  
17 you?

18 A I asked him if he was union, and he told me no. And

19 then I asked him how long has he been working --  
*Tr. 58.*

24 THE WITNESS: So -- okay. So I asked him if he was a  
25 union member. He told me no, and then I asked him how long  
1 has he been working for Littlejohn, and he told me around  
2 six months. And then that's when he stepped back and  
3 pulled his phone out, and made a phone call.

4 Q BY MS. MATA: Do you know who he called?

5 A No, ma'am.

6 Q Was that the end of that conversation?

7 A Yes, ma'am.

8 Q Okay. And you said you spoke to another employee.  
9 A I believe his name was Andrew. Cesar was already  
10 talking to him, and I went over there and I started talking  
11 to him, too. And I asked him how long she been working for  
12 Littlejohn, and he told me a little over two months, in  
13 that ballpark.  
14 Q Do you remember anything else from that conversation?  
15 A I asked him if he was union, and he told me no. And  
16 he did mention that the owner told him that he is union but  
17 he's trying to get out of the union.  
18 Q Okay. Did you ask him anything else?  
19 A I believe I asked him how many other guys are working  
20 there, and he told me a ballpark, about six, if I can  
21 remember.  
22 Q Okay. And did you go to the Toyota Music Center  
23 specifically looking for Littlejohn --  
24 A No, ma'am.  
*Tr. 58-59.*

Despite this clear testimony that the Union agents were just discovering that LES was working a the Union job using non-Union employees, Littlejohn's Brief cites that testimony in support of its unfounded assertion that "as Mr. Cepeda admitted, in his testimony at the Hearing, that they *knew* it was LES' jobsite prior to this invasion." *LES Brief, p. 4*. This type of falsehood and deflection of responsibility was consistent in (1) Littlejohn's interactions with the Union and (2) his testimony during the hearing. Now, it is present in his pleadings before the Board.

**E. LES' "Argument" Section is So Convolutd and Confusing That it Would Take a Monumental Effort to Rebut the Contentions Therein.**

Beginning on page 10 of LES' Brief, LES goes into a convoluted and confusing trek of unsupported "factual" allegations and "legal" conclusions. These allegations and conclusions are either so off-the-wall or so irrelevant that it will obvious to any person with any rudimentary knowledge of NLRB law, rules, and procedure. In lieu of making this Brief into a long and rambling attack on the numerous issues contained in this section of LES' Brief, the Union would respectfully implore the appeal panel to let Judge Ringler's well-reasoned and supported decision

be its guide here.<sup>1</sup>

#### IV. CONCLUSION

As the old saying goes, “A deal is a deal.” Littlejohn shook hands with the relevant Union and NECA officials, and signed the Letter of Assent of his own free will so that he could stay in the apprenticeship program and avoid having to pay \$12,500. Cries of being emotional, under duress, and ignorance over what he signed certainly ring hollow for anyone, but especially so for someone who has proven time and again that he will lie and manipulate to get what he wants. The buck stops here with the lies and manipulations, which have now turned to violations of the nation’s labor laws. For all of these reasons, LES has clearly violated the Act by failing to adhere to the collective bargaining agreement, failing and refusing to recognize the union, failing and refusing to bargain, and failing and refusing to furnish the Union with information, as well as delay in providing that information. Accordingly, the ALJ’s Decision in this case should not be disturbed, and LES’ exceptions to the Decision should be denied in their entirety.

Respectfully submitted,

***LYON, GORSKY & GILBERT, L.L.P.***

12001 N. Central Expressway

Suite 650

Dallas, Texas 75243

Phone: (214) 965-0090

Fax: (214) 965-0097

Email: [dwatsky@lyongorsky.com](mailto:dwatsky@lyongorsky.com)

*/s/ David K Watsky*

David K. Watsky

State Bar Number 20932600

**ATTORNEYS FOR CHARGING PARTY**

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<sup>1</sup> Although Judge Ringler apparently had a typo on page 9, line 23 of his Decision by referring to “ADT” instead of “LES,” it is clear that he was referring to “LES” in reference to his conclusion that LES violated §8(a)(5) of the Act.

**CERTIFICATE OF SERVICE**

I hereby certify that Charging Party's Brief in Opposition to Employer's Exceptions and Brief, was served via e-mail on this 22nd day of May, 2019, as follows:

Clinton Littlejohn  
Respondent

Karla Mata  
NLRB Attorney

/s/ David K Watsky  
David K. Watsky