

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

**LITTLEJOHN ELECTRICAL SOLUTIONS, L.L.C.**

**Respondent**

**and**

**Case 16-CA-214170**

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

**20**

**Charging Party**

**COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF TO  
RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S  
DECISION**

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**I. INTRODUCTION**

On March 4, 2019, the Honorable Administrative Law Judge Robert A. Ringler issued a Decision and Order in this matter, correctly concluding that Respondent violated Section 8(a)(5) of the National Labor Relations Act (NLRA or Act) by failing to comply with the terms and conditions of the collective bargaining agreement, including recognizing the Charging Party and providing requested relevant information. (JD slip op. at 1). In reaching this conclusion, the Administrative Law Judge (Judge) properly applied the Board's standard for evaluating an employer's bargaining obligations and determined that Respondent's actions violated the Act.

On May 1, 2019, Respondent filed Exceptions to the Judge's Decision and Order. In response, Counsel for the General Counsel files this Answering Brief to Respondent's Exceptions to the Judge's Decision and Argument in Support of Exceptions (hereinafter Exceptions). As will be demonstrated below, Counsel for the General Counsel submits that each of Respondent's

Exceptions should be denied and that the Judge's Decision and Order is supported by the credible record evidence and relevant Board law. Counsel for the General Counsel urges the Board to affirm the Judge's Decision and Order.

## II. FACTS<sup>1</sup>

On April 28, 2011, Clinton Kyle Littlejohn became an apprentice for the Joint Apprenticeship and Training Committee (JATC) and signed a mandatory scholarship loan agreement (Tr. 94, LL. 15-25; GC Exh. 4(a)). The scholarship loan agreement has a five-year term and requires that participants reimburse the Union \$12,500 for the cost of the JATC program, \$2,500 per year, if the agreement is breached (GC Ex. 4). Breach of the agreement occurs either by the "apprentice's voluntary action or by the action of the [JATC] during the period of the training provided for [in the] agreement." Id. The scholarship loan agreement defines a breach of the agreement when an apprentice works in the electrical industry for a non-union employer. Id.

In 2011, Littlejohn was removed from the JATC program for stealing wire on the job (Tr. 94, LL. 15-20). A year later, Littlejohn requested to return to the apprenticeship program (Tr. 189, LL. 11-18). The JATC believed he had learned from his mistakes and reinstated him. Id. On May 3, 2012, Littlejohn executed a second scholarship loan agreement that contained identical terms to the first agreement, describing his obligations to the JATC as an apprentice (Tr. 94, LL. 15-25; GC Exh. 4(b)).

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<sup>1</sup> References to the record are as follows: Tr. for Transcript, GC Exh. for General Counsel exhibits, R. Exh. for Respondent exhibits, and JD App'x for Judge Decision Appendix. This case was heard in Fort Worth, Texas before the Honorable Judge Robert A. Ringler on August 20 and 21, 2018, based on an unfair labor practice charge in Case 16-CA-214170 filed by the International Brotherhood of Electrical Workers, Local Union No. 20, on March 20, 2018. (GC Exh. 1(a)). On April 26, 2018, the Regional Director for Region 16 issued a Complaint and Notice of Hearing in Case 16-CA-214170. (GC Exh. 1(e)). Respondent filed its Answer to the Complaint and Notice of Hearing on May 22, 2018. (GC Exh. 1(g)).

Apprentices also receive the Local Inside Wireman Apprenticeship and Training Standards for the North Texas Chapter of National Electrical Contractors Association (NECA) and the Union (Tr. 96, LL. 1-17; GC Exh. 5). This document explains the parties' relationship, employee wages, and other aspects of the apprenticeship program (Tr. 96, LL. 1-17; GC Exh. 5). Littlejohn received these Standards as part of his curriculum (Tr. 96, LL. 18-20). As part of the apprenticeship curriculum, the JATC Training Director Kim Allen and Chairman and former Union business manager Karsten Frentrup testified that Littlejohn and other apprentices received class instruction pertaining to the Union, the collective bargaining agreement between NECA and the Union, the referral process, and learned about contractors, their pay, benefits, etc. (Tr. 97-98, LL. 4-19; 5-25; JD slip op. at 3). Apprentices also receive copies of the collective bargaining agreement between NECA and the Union (Tr. 110, LL. 18-22).

In April 2016, Littlejohn discreetly created his business, Littlejohn Electrical Solutions, and did not disclose to the JATC that he had created his own company and was performing work as a non-union signatory (Tr. 159-160, LL. 24-25, 1-13). As such, Littlejohn was in breach of the scholarship loan agreement and was obligated to repay the \$12,500 to the JATC. By November 2016, while Littlejohn was still an apprentice, he started working *exclusively* for his company (Tr. 123, LL. 16-17). During this time, Littlejohn refused to take work assignments through the JATC, which is a program requirement. *Id.* Due to scheduling conflicts, Allen was not able to confront Littlejohn about his failure to take work assignments from the JATC until two months later (Tr. 101, 105, LL. 9-25, 2-6). In February 2017, Allen confronted Littlejohn and informed him that he was in breach of the scholarship loan agreement and he was required to repay \$12,500. (JD slip op. at 4).

Thereafter, Littlejohn decided, on his own volition, to become a union signatory. He became a signatory so that he could both avoid paying the \$12,500 and continue in the apprentice program (Tr. 105, 357, LL. 22-25, 12-15).

Littlejohn reached out to Union organizer Adrian Cepeda and inquired about the process to become a union signatory. Cepeda informed him that union contractors were required to sign a letter of assent and obtain a surety bond (Tr. 45, 65, LL. 5-8, 12-13). On February 23, 2017, Littlejohn met with Cepeda at the Union's office and executed a letter of assent thereby assigning his bargaining rights to NECA. Littlejohn did not raise any concerns during the signing of the letter of assent, although he inquired about the process of obtaining manpower after he had signed. (Tr. 51, L. 3). After signing the letter of assent, Littlejohn asked the JATC to allow him to remain in the program and graduate (Tr. 105, 357, LL. 22-25, 12-15; JD slip. op. at 4). In an unprecedented decision, the JATC agreed to accommodate Littlejohn's request, thereby assigning him to work for his own company (Tr. 126, 127, LL. 22-3).

Littlejohn now contends that when he signed the letter of assent, he was under duress and that his signature was obtained involuntarily. (JD slip op. at 4). However, Littlejohn acknowledged that he was mentally competent to enter into the contract and was no stranger to the industry (Tr. 442, LL. 16, 20-21). Further, Littlejohn testified that when he executed the letter of assent he was aware that it could potentially excuse him from paying the \$12,500 for violating the scholarship loan agreement (Tr. 326, LL. 5-9).

Thereafter, Respondent, Littlejohn Electrical Solutions, hired workers who were not referred by the Union's hiring hall in 2017 and this practice continued into 2018. (JD slip op. at 5). The Union learned that Respondent was hiring outside the hall in January 2018 when its two union organizers, Cepeda and Cesar Martinez came across a Gloria's Restaurant jobsite and

observed Respondent's non-Union employees performing electrical work. Thereafter, the Union and NECA scheduled a meeting with Littlejohn to discuss their concerns over the Gloria jobsite, Respondent's refusal to abide by the parties' collective bargaining agreement, and its delinquent benefit payments to NECA. (JD slip op. 6). Littlejohn met with NECA representative Steve Corley and the Union's business manager, Karsten Frentrup. Littlejohn denied that he was hiring labor outside of the Union's hiring hall and agreed to pay the delinquent benefit payments.

On January 22, 2018, Frentrup emailed Littlejohn requesting five items that pertained to Respondent's hiring outside of the Union's referral procedure (Tr. 206, LL. 13-17; GC Exh. 12 and 13). The Union requested the following items: 1) names, addresses, phone numbers, TDLR license classification, pay rates, hours worked, benefits contributions paid, and termination dates of all employees hired over the last 12 months; 2) list of employees hired by methods other than those prescribed by the collective bargaining agreement; 3) the name and locations of all projects performed in the last 12 months; 4) the crew structures utilized on all projects performed in the last 12 months; and 5) the names of those employees acting in the roles of foremen and general foremen utilized on each project performed in the last 12 months. *Id.* On January 26, 2018, Frentrup also filed a grievance against Respondent for its failure to provide the information requested and because Respondent continued to employ individuals outside of the Union's referral procedure (Tr. 247, LL.6-7; GC Exh.15). Respondent did not provide any information to the Union until March 2018 (Tr. 208, LL. 13-16). Respondent provided item 4 in its entirety and partially provided item 1, with the exception of employee hours worked and benefit contributions paid (Tr. 208-209, LL. 23-25, 1-14; GC Exh. 14). Respondent failed to provide items 2, 3 and 5. *Id.* As such, the Union's request for information remains outstanding (Tr. 209, LL. 15-20).

Thereafter, on January 26, 2018, Respondent sent an ineffective letter to Frentrup and NECA stating that he was withdrawing from the letter of assent and all other agreements between the Union and NECA (Tr. 210, LL. 6-14; R. 16). On January 30, 2018, Respondent made a second attempt to terminate the bargaining relationship by sending another letter to Frentrup (R. 18). However, Respondent's attempted repudiations were not consistent with the letter of assent and the collective bargaining agreement, which require that Respondent terminate his bargaining rights with NECA and give at least one hundred and fifty days' notice from its current anniversary date of the collective bargaining agreement of its intent to terminate the relationship. As such, Respondent is still bound to the LOA (Tr. 265, LL. 18-20; JD slip op. at 7).

### **III. ARGUMENT**

In its Exceptions, Respondent raised forty points. Respondent's contentions include attacks on to the Judge's word choice, his findings of facts and his legal conclusions. Throughout its exceptions, Respondent takes findings out of context, attempts to create discrepancies where none exists, and misstates the law. Taken together, Respondent's Exceptions are no more than a reiteration of its failed defense. This Section discusses why Respondent's Exceptions are procedurally defective and how the Judge's decision to which Respondent objects are fully supported by the record evidence and case law.

#### **A. Respondent's Exceptions are Procedurally Flawed and Should be Disregarded**

Counsel for the General Counsel asserts that Respondent's Exceptions are procedurally defective and should be disregarded in all respects.

Section 102.46(b)(1) of the Board's Rules and Regulations requires that:

[e]ach exception (i) shall set forth specifically the questions of procedure, fact, law or policy to which exception is taken; (ii) shall identify that part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of

page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception.

Although Respondent identifies the parts of the Judge's decision to which objections have been made, the Exceptions do not state the question of procedure, fact, law or policy corresponding with each Exception. Further, Respondent's Brief in Support of Exceptions does not comply with Section 102.46(c) which provides that:

[a]ny brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following: (1) [a] clear and concise statement of the case containing all that is material to the consideration of the questions present[;] (2) [a] specification of the questions involved and to be argued, together with a reference to the specific exceptions to which they relate[; and,] (3) [t]he argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the record and the legal or other material relied on.

Respondent's Brief does not provide a clear statement of the case and fails to cite the relevant applicable law. Instead, the Brief is general in nature. Accordingly, Counsel for the General Counsel contends that Respondent's Exceptions and Brief in Support of Exceptions are procedurally defective and urges the Board to disregard such in their entirety.

**B. Respondent's Exceptions to Factual Findings and Legal Determinations are Unfounded and Should be Disregarded**

Counsel for the General Counsel further submits that Respondent's Exceptions to the Judge's factual findings and legal determinations are substantially unfounded as such determinations are fully supported by the credible record evidence and case law.

**1. Respondent voluntarily and knowingly executed the letter of assent**

Respondent challenges the Judge's finding that its acceptance of the letter of assent was voluntary or that it was aware of the collective bargaining agreement. (JD slip op. at 4, 5, LL 11-14 and 40-41). Respondent's argument falls flat. As the Judge correctly pointed out, Littlejohn was

in the JATC program since 2011 and it is unfathomable that he was unaware of the collective bargaining agreement. The letter of assent was clear and unambiguous and directly referenced the collective bargaining agreement between NECA and the Union. See *Positive Electrical Enterprises, Inc.*, 345 NLRB 915, 922 (2005) (finding fraud in execution defense not applicable because employer had ample opportunity to read one-page document, which referenced labor agreement between union and NECA). Respondent makes much of the fact that Littlejohn was not provided with a copy of the parties' collective bargaining agreement at the time he signed the letter of assent, but this argument ignores the fact that he had not requested one (Tr. 131, LL. 13-16). Littlejohn simply testified that "it's not my responsibility" to ask for a copy (Tr. 443, LL. 10-15).

Allen testified consistently and credibly that apprentices, including Littlejohn receive copies and classroom instruction on the collective bargaining agreement and how it applies to apprentices (Tr. 98-100, LL. 10-25, 13-24, 18-22). Further, the Union did not force Littlejohn's hand in any way; rather, Littlejohn's predicament was caused by his own doing, i.e., surreptitiously creating his own company. See *Positive Electrical Enterprises, Inc.*, 345 NLRB 915 (2005) (finding "a sense of indebtedness or even obligation certainly does not rise to the level of coercion that would constitute duress").

Moreover, the Judge notes that Littlejohn's testimony, "very candidly, appeared to be a concocted effort to avoid his legal obligations." While Cepeda, Frentrup, Martinez, and Allen provided credible testimony and were cooperative witnesses with strong demeanors. (JD slip op. at 3, 5, LL. 11-14, 11-12). The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless there is a clear preponderance of all the relevant evidence that convinces the Board otherwise. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). The Judge appropriately relied on corroborated testimony of the General

Counsel's witnesses that discredited Littlejohn's version of events. As such, the Judge's credibility finding should not be disturbed and his legal conclusion should be affirmed: Littlejohn voluntarily and knowingly entered into the letter of assent.

## **2. Respondent violated the collective bargaining agreement**

Respondent further objects to the conclusion that he failed to adhere to the parties' collective bargaining agreement. Yet, Littlejohn testified that he hired employees outside of the Union's referral procedure in 2017 and 2018 and admitted that he had not been paying them contract-mandated wage rates (Tr. 140, 169, LL. 15-17, 1-3). Matos and Ramirez also credibly testified that they worked for Respondent on several different electrical projects and that they were not referred by the Union and were not receiving benefits (Tr. 171, 181, LL. 17-19, 19-22). As such, it is clear that Respondent hired outside of the Union's referral procedure and that he failed to pay these employees the appropriate wages and benefits and so violated Section 8(a)(5) and (1) of the Act. See *Westrum Electric*, 365 NLRB No. 151 (2017).

## **3. Respondent failed and delayed in providing relevant information to the Union regarding its non-union employees**

On January 22, 2018, the Union requested information. In March 2018, Respondent provided the Union with a portion of the documents that were responsive to the Union's information request (Tr. 208, 11-14; GC Exh. 14). Respondent failed to provide items 2, 3, and 5, and only partially provided item 1. (Tr. 209, LL. 3-14). Respondent further delayed in providing items 1 and 4 and failed to provide any explanation for the delay. Respondent provided no evidence that the information provided was "was particularly complex, voluminous, or burdensome to provide." See *Comar, Inc.*, 349 NLRB 342, 353-354 (2007); *Pan American Grain Co.*, 343 NLRB 318 (2004), *enfd.* in relevant part 432 F.3d 69 (1st Cir. 2005) (holding a 3-month delay as unreasonable); *Bundy Corp.*, 292 NLRB 671 (1989) (holding that a delay of 2.5 months violates

the Act). However, Respondent asserts that its response to the Union's information request was sufficient. The Judge correctly found that the Union needed the information in order to investigate Respondent's repudiation of the collective bargaining agreement and in order to evaluate an appropriate remedy. (JD slip op. at 9, LL. 1-5). Accordingly, Respondent's refusal and delay in providing the requested information violated Section 8(a)(5) and (1) of the Act, as alleged.

#### **4. Respondent did not effectively terminate its bargaining relationship with the Union**

Respondent argues that it effectively terminated its bargaining relationship. On January 26 and 30, 2018, Respondent submitted two letters to the Union and NECA stating its intent to terminate the collective bargaining agreement and withdraw from the Union. However, pursuant to the letter of assent, the Association possesses Respondent's bargaining rights. See *Seedorff Masonry, Inc.*, 360 NLRB No. 107, at slip op. 6 (2014), citing *Haas Electric, Inc.*, 334 NLRB 865, 866 fn. 7 (2001), enf. denied on other grounds 299 F.3d 23 (1st Cir. 2002). Therefore, in order for Respondent to properly terminate the bargaining relationship, Littlejohn must revoke NECA's authority to negotiate on Respondent's behalf. See *Id.* Further, when Respondent submitted his letters, they were ineffective because they were made prior to the 90-day requirement. As such, Respondent did not timely and effectively terminate the LOA. (GC Exh. 6).

#### **C. The Text of the Act and Board Law Support the Judge's Legal Conclusion that Respondent Violated the Act**

Lastly, Respondent attacks the Judge's legal conclusion, proposed remedy and order. As discussed in the paragraphs above, the Judge properly set out cases and statutory text establishing the legal principles supporting his conclusion. See *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1987), cert. denied 488 U.S. 889 (1988). Additional Board law serves to support the Judge's legal conclusions. See, e.g., *Taylor*

*Ridge Paving and Construction, Co.*, 365 NLRB No. 168 (2017); *Den-Ral, Inc.*, 315 NLRB 538 (1994); *Sheehy Enterprises, Inc.*, 353 NLRB No. 84 (2009).

#### IV. CONCLUSION

For the forgoing reasons, the General Counsel respectfully requests that the Board deny Respondent's Exceptions and affirm the Judge's findings of fact and conclusions of law. Counsel for the General Counsel also requests any further relief the Board deems appropriate.

**DATED** at Fort Worth, Texas, this 22<sup>nd</sup> day of May, 2019.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 22<sup>nd</sup> day of May 2019, a copy of the foregoing Counsel for the General Counsel's Answering Brief to Respondent's Exceptions to the Administrative Law Judge's Decision was served upon each of the following:

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