UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 19

TDY INDUSTRIES, LLC d/b/a ATI SPECIALTY ALLOYS AND COMPONENTS, MILLERSBURG OPERATIONS	)	**Cases: 19-CA-227649 and 19-CA-227650**
Respondent	)	
and	)	
UNITED STEELWORKERS OF AMERICA, LOCAL 6163	)	
Charging Party	)	

RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND ITS REQUEST FOR ORAL ARGUMENT

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Respondent ATI Specialty Alloys and Components ("ATI," the "Company," or "Respondent"), pursuant to Rule 102.46 of the National Labor Relations Board's ("NLRB" or "Board") rules, files the following Exceptions to the decision of Administrative Law Judge ("ALJ") Eleanor Laws, dated September 25, 2019.[1]

1. Respondent excepts to the ALJ's finding that "the Respondent, without any justification, failed to respond to Watts' follow-up request for the names of the last 30 employees to pass away." (ALJD 8:5-6.)

2. Respondent excepts to the ALJ's finding that "[t]he Respondent's failure to provide the information regarding the last 30 employees to pass away" violated Sections 8(a)(1) and (5) of the Act. (ALJD 8:8-11.) Such a violation was not alleged in the Complaint; it was not litigated at the hearing; and it was not addressed in either of the party's respective post-hearing briefs to the ALJ.

3. Respondent excepts to the ALJ's finding that "the Respondent's failure to provide information about the death benefit in response to Watts' May 25, 2018 request once the confusion subsided" violated Sections 8(a)(1) and (5) of the Act (ALJD 8:9-11), where the ALJ correctly found that: (1) "the Union failed to meaningfully respond to Brown's request for clarification about what 'death benefit' the Union was referring to in its information request, thwarting his attempts to comply" (ALJD 7:38-40); and (2) the "confusion" caused by the Union's ongoing failure to provide a meaningful response to Respondent's requests for clarification did not subside until "the time of the hearing." (ALJD 8:6-8; *see also* ALJD 7:29-38.)

[1] The Administrative Law Judge's decision is cited as "ALJD" followed by the appropriate page and line numbers.

4. Respondent excepts to the ALJ's finding that "[p]resumptively relevant information must be furnished on request to employees' collective-bargaining representatives unless the employer establishes a legitimate affirmative defense to the production of the information." (ALJD 6:44-46.) The ALJ's finding in this regard is an incomplete statement of established Board law holding that presumptively relevant information must be furnished unless the employer establishes an affirmative defense *or* rebuts the presumption of relevance. *Michigan Bell Tel. Co.*, 367 NLRB No. 74, slip op. at 2 (2019) ("Information that relates to unit employees' terms and conditions of employment is presumptively relevant. An employer must provide such information unless it rebuts the presumption of relevance or establishes an affirmative defense.")

5. Respondent excepts to the ALJ's finding that "[t]he request for Marthaller's qualifications is clearly relevant to the grievance the Union filed alleging the Respondent had denied promotional opportunities to bargaining-unit employees by hiring underqualified employees from outside to perform machining duties." (ALJD 8:15-17.) The collective bargaining agreement provisions pursuant to which the Union brought its grievance only provide that Respondent has the right to hire outside applicants if no qualified unit employees bid for a position, and does not provide any means for the Union to challenge the qualifications of an outside applicant. Therefore, the qualifications of outside hire Marthaller are not relevant to the contractual grievance.

6. Respondent excepts to the ALJ's finding that the issue with regard to the production of information about Marthaller's qualifications "is one of delay, thus arguments about whether the Respondent had good reason to withhold the information are inapposite." (ALJD 8:44 – 9:2.)

7. Respondent excepts to the ALJ's finding that, "The presumptively relevant information was eventually produced, leading to the conclusion that any confidentiality, overbreadth, or concerns were not in the end legitimate justifications for withholding the

information." (ALJD 9:2-5.) The Act does not prohibit an employer from voluntarily agreeing to provide information the employer could lawfully withhold, nor does the Act impose a requirement of "timeliness" relating to the provision of information that an employer has no duty to furnish.

8. Respondent excepts to the ALJ's failure to consider the record evidence establishing that the parties had agreed to narrow the scope of the Union's information request relating to Marthaller's qualifications. (ALJD 4:38 – 6:14; ALJD 10:13 – 11:17.)

9. Respondent excepts to the ALJ's finding that "Marthaller was not required to repeat his request for the transcript at the subsequent meeting in order to keep it alive." (ALJD 9:7-8.) The ALJ's decision erroneously refers to "Marthaller" (the subject of the information request) rather than "Watts" (the individual who requested information about Marthaller). Respondent further excepts to this finding on the basis that it fails to consider evidence that at the meeting in question, the Company continued to dispute the relevance of the requested information to the Union's grievance, and the parties ultimately agreed to narrow the scope of the Union's information request to certain items, *not* including the referenced "transcript."

10. Respondent excepts to the ALJ's finding that "[t]he Union was not required to wait for a meeting with the Respondent, and was not required to narrow its basic request" relating to Marthaller's qualifications. (ALJD 9:12-13.) The Union was not entitled to receive the requested information because it was not actually relevant to any grievance that could be brought under the collective bargaining agreement.

11. Respondent excepts to the ALJ's finding that Respondent violated Sections 8(a)(1) and (5) of the Act "by failing to respond fully to the Union's June 12 information request for more than 3 months." (ALJD 9:15-17.) The Union was not entitled to receive the requested

information because it was not actually relevant to any grievance that could be brought under the collective bargaining agreement.

12. Respondent excepts to the ALJ's failure to address the Company's argument that any presumption of relevance that may have been found relating to Marthaller's qualifications was rebutted by evidence that Marthaller's qualifications were not actually relevant to the Union's grievance. (ALJD 4:38 – 6:14; ALJD 10:13 – 11:17.)

13. Respondent excepts to the ALJ's conclusions of law as erroneous and unsupported in fact and law. (ALJD 9:19-28.)

14. Respondent excepts to the ALJ's remedy and order in their entirety. (ALJD 9:30 – 11:4.)

15. Respondent excepts to the ALJ's order that Respondent "provide to the Union an audit of the death benefits paid out over the last 10 years as well as surviving spouse benefits and earned pension benefits for both active and terminated, as well as retired employees." (ALJD 10:22-24.) The ALJ's order fails to specify to what "death benefits" it refers, and also fails to consider the record evidence establishing the Company had not performed any such audit by the time of the hearing; therefore, there is no "audit" that can be produced.

16. Respondent excepts to the ALJ's conclusions, remedy, and order because they contravene the record evidence and relevant legal precedent. (ALJD 9:19-11:4.)

17. Respondent excepts to the ALJ's failure to rule on all material issues of fact, law, or discretion presented on the record as required by Rule 102.45. (*See* Respondent's Post-Hearing Brief.)

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REQUEST FOR ORAL ARGUMENT

As discussed fully in Respondent's Brief in Support of Exceptions to ALJ's Decision, this case presents significant questions of law that arise frequently in cases before the Board. The central issues in this case include:

1. Whether an employer violates the Act by its failure to provide requested information in response to a vague and confusing request from a union, where the employer promptly seeks clarification and the union fails to provide a meaningful response to the employer's request before the time of the hearing; and
2. Whether an employer has an obligation to provide information that is arguably relevant to a union's claim that the employer has violated the collective bargaining agreement, where the provisions of the collective bargaining agreement make clear that the stated theory of the union's case has no basis in the contract.

Because of the significance of the issues presented in this case and the need for employers and professional employer organizations to have clear guidance on these matters, Respondent respectfully submits that oral argument is appropriate and will assist the Board's decision in this case.

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WHEREFORE, for the reasons stated above and in Respondent's brief in support filed contemporaneously, Respondent requests that the Board grant its request for oral argument, reverse the ALJ's decision, and dismiss the complaint in its entirety.

Respectfully submitted,

Dated: October 23, 2019

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

s/ Ursula A. Kienbaum

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CERTIFICATE OF SERVICE

I certify that on October 23, 2019, a copy of the foregoing **RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND ITS REQUEST FOR ORAL ARGUMENT** has been filed via electronic filing with:

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