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 REPLY BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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I. ARGUMENT

Respondent ATI Specialty Alloys and Components ("ATI," the "Company," or "Respondent"), pursuant to Rule 102.46(h) of the National Labor Relations Board's ("NLRB's" or "Board's") rules, respectfully submits this reply brief in response to the General Counsel's Answering Brief to Respondent's Exceptions to the Decision of the Administrative Law Judge.[1]

As set forth below, the General Counsel ("GC") incorrectly claims the Administrative Law Judge ("ALJ") made findings that the ALJ did not make, and the GC fails to successfully defend the ALJ's findings to which Respondent has excepted.

A. The GC fails to show the ALJ found the confusion regarding the Union's request for information about unspecified "death benefits" was resolved before the hearing.

The GC emphasizes the ALJ found that "*at least* by the time of the hearing, the Respondent knew which death benefit was the subject of Watts' information request." (GC Answering Brief at 2; ALJD 8:6-8.) Contrary to the GC's arguments, "at least by the time of the hearing" does not mean "prior to the hearing." (GC Answering Brief at 2.) It cannot mean anything more than "not later than the time of the hearing."

If the ALJ had found the confusion was resolved at some time *before* the hearing, the ALJ could have so stated. Indisputably, she did not. Additionally, the ALJ specifically found that the testimony of the Union's local president *at the hearing* made "clear the term 'death benefit' is vague." (ALJD 7:29-31.) To the extent the GC asserts that by stating "at least by the time of the hearing," the ALJ somehow meant "before the time of the hearing," such a claim has no basis in fact or logic.

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[1] Respondent's Brief in Support of Its Exceptions to the Decision of the Administrative Law Judge is referenced herein as "Respondent's Opening Brief." The General Counsel's Answering Brief to Respondent's Exceptions to the Decision of the Administrative Law Judge is referenced herein as "GC's Answering Brief."

B. The GC fails to show the ALJ found any "resistance" by the Company in response to the Union's request for death benefits information.

The GC falsely claims Respondent has "admitted" the Union asked for the names of the last 30 employees who passed away "because, in the face of resistance from Respondent, the Charging Party was attempting to make it as easy as possible for Respondent to start collecting the information it needed." (GC Answering Brief at 4.) Respondent admits no such allegations.

Contrary to the GC's claims, the ALJ did not find that Respondent exhibited any "resistance" to the Union's request for information about death benefits, but only found that Watts "perceived" such resistance. (ALJD 4:34-35.) Nor did the ALJ find that "the Charging Party was attempting to make it as easy as possible for Respondent to start collecting the information it needed" by asking about the last 30 employees who passed away. (GC Answering Brief at 4.) The ALJD only found that Watts was trying "to be more clear" about the death benefits information he sought, which effort the ALJ ultimately found to be unsuccessful. (ALJD 4:35, 7:38-40.)

C. The GC fails to show the parties litigated the issue of whether the Company unlawfully failed to provide the names of the last 30 employees to pass away.

The GC's statement that the Union "was attempting to make it as easy as possible for Respondent to start collecting the information it needed" when Watts asked about the last 30 employees to pass away (GC Answering Brief at 4) effectively concedes the Union was not literally requesting to be provided a list of the last 30 employees to pass away. Nor does the GC explain how such a list would facilitate the provision of the information the Union *truly* sought relating to death benefits, where the Union failed to clarify what it meant by "death benefits" in the first instance.

As stated above and in Respondent's Opening Brief, the only evidence adduced at the hearing relating to the Union's question about the last 30 employees to pass away unequivocally

establishes that—as the ALJ explicitly found—the question was merely part of the Union's failed attempt to "clarify" its request for information about death benefits.

Although the GC asserts the Union's *admittedly clarifying* question about the "last 30 employees to pass away" was actually a specific request for necessary and relevant information that Respondent allegedly failed to produce in violation of federal labor law, the GC fails to show the parties litigated the claimed violation. Notably, the GC does not even attempt to address (1) the lack of an explicit reference to the list of 30 employees in the Complaint; (2) the lack of any reference to a claimed failure to provide the list of 30 employees in the GC's opening statement at the hearing before the ALJ; (3) the lack of any discussion relating to a claimed failure to provide such information in the parties' post hearing briefs; (4) the lack of a request by the GC for an order that Respondent provide such information to the Union; and (5) the lack of any exception by the GC to the ALJ's failure to order Respondent to provide the names of the last 30 employees to pass away. These indisputable facts establish the parties did not litigate the issue of a request for the names of the last 30 employees to pass away, and the GC cannot show otherwise.[2] C*ompare Am. Med. Response W.*, 366 NLRB No. 146 (2018) (Employer's failure to provide names of witnesses was "clearly was raised to the judge" where the complaint specifically alleged the employer unlawfully failed to provide witness names; "the General Counsel clearly argued to the judge that the Respondent acted unlawfully by failing to provide this information to the Union;" and "in his posthearing brief to the judge, the General Counsel specifically argued that the Respondent acted unlawfully by failing to provide the Union with the names of the witnesses interviewed during its investigation.").

[2] Nor can the GC show that Respondent "simply chose not to" litigate the issue of the 30 names—as the GC fallaciously asserts (GC Answering Brief at 4)—where the GC likewise failed to litigate the issue.

D. The GC fails to show the ALJ properly found the requested information about an outside hire's qualifications was relevant to the Union's duty as the collective bargaining representative.

The GC fails to establish that the ALJ did not err in finding that information about the qualifications of outside hire Marthaller was relevant to a contractual grievance. The fact that the Union phrased its grievance in terms of a claimed lack of qualifications on the part of individuals who were hired for bargaining unit positions, does not bestow upon the Union a right to demand information relating to a novel grievance theory that ignores the plain language of the contractual provisions the Union cites in support of its claimed violation.

It must be noted the parties' CBA specifically provides only for the bringing of grievances "regarding the alleged violation of any provision of this Agreement." (GC Ex. 6, p. 49.) The grievance form that is submitted to the Respondent must cite "the specific Section of the Agreement allegedly violated" and "the basis for the claim that the Agreement was violated." (*Id*. at p. 50.) The contractual grievance procedure further provides for arbitration "[i]n the event the Parties are unable to reach a settlement of a grievance in Step 4 following the alleged violation of a provision of this Agreement." (*Id*. at p. 51.) Therefore, the plain terms of the CBA make it abundantly clear that a contractual grievance *must* be premised on a claimed *violation* of a specific provision or provisions in the collective bargaining agreement.

As thoroughly explained in Respondent's Opening Brief, there are no provisions in the CBA that give the Union a right to challenge the qualifications of outside hires. The relevant provisions cited by the Union in support of its grievance only provide that if there are no qualified bidders to fill a vacancy from within the unit, the Company "may fill the vacancy by hiring from the outside and assigning the new employee to the position." (GC Ex. 6, pp. 27-28.) Although Marthaller's qualifications may have been relevant to the Union's opinion that he was not qualified, *the Union cannot prove any violation of the collective bargaining agreement based*

on its opinion of Marthaller's qualifications. Simply stated, the CBA does not give the Union any right to dispute the qualifications of an outside hire. To show a violation of the CBA, the Union must establish the Company passed over qualified applicants *from within the bargaining unit*. Under these indisputable facts, the GC cannot establish that the ALJ correctly found the requested information concerning Marthaller's qualifications was relevant and necessary to the Union's obligations as the collective bargaining representative.

Under established NLRB law, "The presumption of relevance is a rebuttable presumption." *Michigan Bell Tel. Co.*, 367 NLRB No. 74, slip op. at 2 (2019) (The Board examined the parties' collective bargaining agreement and concluded the employer had rebutted any presumption of relevance applicable to certain information requested by the union in connection with its grievance.). The unambiguous language of the parties' collective bargaining agreement unequivocally supports a finding that the Company has rebutted any presumption of relevance with regard to Marthaller's qualifications, such that no violation of the Act can be found based on an alleged delay in providing such information.

E. The GC fails to establish the ALJ addressed the issue of the parties' agreement to narrow the scope of the Union's information request relating to Marthaller.

To the extent the GC asserts the ALJ "properly" made various determinations and findings about the "weight of the evidence" and the "credibility" of witnesses on the issue of whether the parties had agreed to narrow the scope of the Union's request for information about Marthaller's qualifications, the GC cites to nothing in the ALJ's decision that indicates any such determinations or findings. (GC Answering Brief at 6-7.)

As stated in Respondent's Opening Brief, the ALJ made no findings or "credibility determinations" with regard to the existence of an agreement to narrow the scope of the information request. Nor did the ALJ "distinguish Respondent's citations" or "reject

Respondent's arguments" about an agreement to narrow the scope of the Union's request. (GC Answering Brief at 7.) The ALJ wholly failed to consider the issue, much less any relevant arguments or legal citations advanced by Respondent, and the GC cannot show otherwise.

II. CONCLUSION

WHEREFORE, for all of the reasons set forth above and in Respondent's Opening Brief, the Board should reverse the ALJ and dismiss the Complaint against Respondent in its entirety.

Respectfully submitted,

Dated: November 20, 2019

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

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CERTIFICATE OF SERVICE

I certify that on November 20, 2019, a copy of the foregoing **RESPONDENT'S REPLY BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE** has been filed via electronic filing with:

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