

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
Administrative Law Judge Arthur Amchan**

UNITED STEEL, PAPER AND)	
FORESTRY, RUBBER,)	
MANUFACTURING, ENERGY, ALLIED)	
INDUSTRIAL AND SERVICE WORKERS)	Case No. 08-CB-238577
INTERNATIONAL UNION, LOCAL 1-912)	
)	
)	
and)	
)	
JOHN BROWN, An Individual)	RESPONDENT UNION’S
)	MOTION TO STRIKE A PORTION
)	OF THE BRIEF OF COUNSEL
)	FOR THE GENERAL COUNSEL
)	

Respondent United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-912 (“Union”), by and through counsel, herein moves to strike a portion of the Brief (“Brief”) of Counsel for the General Counsel (the “GC”) which misrepresents testimony contained in the hearing transcript. For the reasons detailed below, this motion should be granted.

One of the witnesses called by the GC was Daniel Smith. As relevant to this motion, Mr. Smith testified as follows regarding a conversation he claimed he had with Union Treasurer and Chair of the Union’s Civil and Human Rights Committee Joseph Sauerwein:

Joe had come down because he was interested in the possibility of people being offended by language in letters, and the sum and substance is that we don't want anybody getting in trouble, we definitely don't want to spend a bunch of union money on John if we don't have to. The easiest way for John to not get in trouble is to not write letters.

Hearing Transcript at Page 57, Lines 10 through 17.

Page 4 of the GC's Brief accurately quotes a portion of Smith's above-quoted testimony citing to Transcript Page 57. However, on Page 9 of its Brief, the GC grossly misstates and misrepresents Smith's testimony with a citation to Transcript Page 57 as follows:

... current employee and Union member Dan Smith testified that during his March 1 conversation with Sauerwein, Sauerwein told him he was looking for Brown that day **so he could get Brown to stop writing his letters critical of the Union.** (Tr. 57)

GC Brief at 9 (emphasis added).

The entirety of Page 57 of the Transcript is attached hereto as Exhibit A. As is obvious, Smith nowhere testifies that Sauerwein made any mention of getting Brown to stop writing letters critical of the Union. The portion of the GC's Brief which attributes such testimony to Smith with a citation to Page 57 is a gross misrepresentation of Smith's testimony and should be stricken.

Roemer Industries, Inc., 367 NLRB No. 133 (2019) demonstrates the soundness of the Union's motion to strike. In *Roemer*, the GC from Region 8, the very Region bringing the instant case against the Union, "filed a motion to strike 6 portions of Respondent's brief." 367 NLRB No. 133, slip opinion at 5. The ALJ granted the motion because "Respondent misrepresented portions of the transcript and/or included facts in its brief that were not in the transcript." *Id.* The Board upheld the ALJ in this regard noting in relevant part that Roemer's brief included statements "without record support". *Id.* at 1, fn. 2. Here too, the GC's attribution of the above testimony to Smith with an accompanying Transcript page citation is "without record support", includes "facts in its brief that were not in the transcript" and should also be stricken.

Prior to filing this motion, the Union requested the GC to file an amended brief deleting the misstatement of Smith's testimony. *See* Exhibit B. The GC has declined to do so. The Union understands the GC's position to be that the Page 9 attribution of Smith's testimony is a fair interpretation of his testimony. This position fails because the GC does not use words such as "Smith's testimony should be construed as ..." or "Smith's testimony should be viewed as effectively stating ...". Rather, the GC flat out attributes to Smith testimony he never uttered and seeks to bolster its doing so with a specific Transcript citation. The Union submits that doing so misrepresents the record and warrants the striking of that portion of the GC's brief as was done in *Roemer*.

WHEREFORE, the Union respectfully submits that its motion is well taken and the GC's misrepresentation of Smith's testimony on Page 9 of the GC's Brief should be stricken.

SCHWARZWALD MCNAIR & FUSCO LLP

/s/ Timothy Gallagher
Timothy Gallagher (0058401)
1215 Superior Avenue East
Suite 225
Cleveland, OH 44114-3257
(216) 566-1600 (telephone)
(216) 566-1814 (facsimile)
tgallagher@smcnlaw.com

Attorneys for the Union

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2019 the foregoing Respondent Union's Motion To Strike A Portion Of The Brief Of Counsel For The General Counsel was filed electronically and a copy was served via electronic mail on the following:

John Brown
631 County Road 10
Helena, Ohio 43435
bobbridgez@yahoo.com (email)

and

LerVal Elva, Esq.
National Labor Relations Board
Region Eight
1240 East Ninth St., Rm. 1695
Cleveland, Ohio 44199-2086
LerVal.Elva@nlrb.gov

Counsel for General Counsel

/s/ Timothy Gallagher
Attorney for the Union

1 And I hadn't seen it before or after that. But
2 we had a -- that is right around the same time
3 I saw it, because I remember Joe wanting to
4 look for John.

5 Q. Did you speak with Joe at the time
6 that he came down looking for John?

7 A. I did.

8 Q. And what do you recall about this
9 conversation with Joe Sauerwein?

10 A. Joe had come down because he was
11 interested in the possibility of people being
12 offended by language in letters, and the sum
13 and substance is that we don't want anybody
14 getting in trouble, we definitely don't want to
15 spend a bunch of union money on John if we
16 don't have to. The easiest way for John to not
17 get in trouble is to not write letters.

18 Q. Did he communicate --

19 JUDGE AMCHAN: Well, I mean, is
20 this what Mr. Sauerwein --

21 THE WITNESS: Yes, this is the --

22 JUDGE AMCHAN: That's pretty much
23 what he said to you?

24 THE WITNESS: Yes. This is the --
25 it's a condensed version of a conversation that



Timothy J. Gallagher

From: Timothy J. Gallagher
Sent: Friday, November 22, 2019 5:47 PM
To: 'Elva, LerVal M.'
Cc: Jamie M. Holland
Subject: RE: Steelworkers Local 912 08-CB-238577

Importance: High

Tracking:	Recipient	Delivery
	'Elva, LerVal M.'	
	Jamie M. Holland	Delivered: 11/22/2019 5:47 PM

Lerval:

On Page 9 of your Post Hearing Brief you include the following statement : "... current employee and Union member Dan Smith testified that during his March 1 conversation with Sauerwein, Sauerwein told him he was looking for Brown that day so he could get Brown to stop writing his letters critical of the Union. (Tr. 57)"

Page 57 of the Transcript contains no such statement by Mr. Smith. Rather Mr. Smith states the following: on Lines 10 through 17:

"Joe had come down because he was interested in the possibility of people being offended by language in letters, and the sum and substance is that we don't want anybody getting in trouble, we definitely don't want to spend a bunch of union money on John if we don't have to. The easiest way for John to not get in trouble is to not write letters."

The above-quoted statement from your Post Hearing Brief is a gross misstatement of Mr. Smith's actual testimony. That this is so is demonstrated by your earlier correct quotation of Mr. Smith's actual testimony on Page 4 of your Post-Hearing Brief.

Accordingly, I request that you file an amended brief deleting this misstatement. Absent your willingness to do so, I will file a motion to strike the above-quoted portion of your brief with the ALJ and consider potential legal remedies. Please let me know by 1:00 p.m. on Monday, November 25th.

Tim Gallagher

From: Elva, LerVal M. [mailto:LerVal.Elva@nlrb.gov]
Sent: Friday, November 22, 2019 4:30 PM
To: Amchan, Arthur <Arthur.Amchan@nlrb.gov>
Cc: Timothy J. Gallagher <tgallagher@smcnlaw.com>; bobbridgez@yahoo.com
Subject: Steelworkers Local 912 08-CB-238577

I attached a copy of the General Counsel's Post-Hearing Brief filed with the Division of Judges this afternoon.

Thank you,

