

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ALLIED
INDUSTRIAL AND SERVICE WORKERS
LOCAL 1-912 (TOLEDO REFINING COMPANY,
LLC)**

Case 08-CB-238577

and

JOHN BROWN, AN INDIVIDUAL

**GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S MOTION TO STRIKE A
PORTION OF GENERAL COUNSEL’S BRIEF**

Pursuant to Section 102.24(a) and 102.35 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel (General Counsel) respectfully requests Honorable Arthur Amchan, Administrative Law Judge (ALJ) deny Respondent’s Motion to Strike a Portion (Motion) of General Counsel’s post-hearing brief. (GC Brief)

In its Motion, Respondent’s counsel contends that the GC Brief “grossly misstates and misrepresents” testimony contained in the hearing transcript (Tr). The sentence at issue is “[c]ontrary to this testimony, 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)” Notwithstanding the Respondent’s claim, that sentence is readily supported by the record evidence and is a reasonable interpretation of the testimony contained in the hearing transcript.

Employee and Respondent member Dan Smith testified at the hearing that Respondent’s Civil and Human Rights Committee Chairman Joseph Sauerwein was looking for Charging Party

John Brown to discuss Brown's letters critical of the Union. After telling Smith that he did not want to get anyone in trouble, Sauerwein told Smith he did not want to "spend a bunch of union money on John [Brown] if we don't have to" and "the easiest way for John to not get in trouble is to not write letters." (Tr. 57) The sentence that Respondent is seeking to strike is clearly a reasonable interpretation of Smith's testimony --that Sauerwein was looking for Brown to avoid any trouble for Brown from the Respondent and in order to avoid that trouble, Brown should cease writing these letters. The General Counsel has not grossly mischaracterized this testimony.

Section 102.35(a)(12) of the Board's Rules and Regulations provides the ALJ with authority to request briefs from the parties regarding their respective position on issues and supporting theories. The very purpose of the trial brief is to assist the ALJ in rendering a decision by pointing out pertinent evidence from the record and relevant theories supporting the party's position. As noted, the General Counsel's brief is a reasonable interpretation of Smith's testimony and references the transcript for the ALJ to make his own determination of this evidence. The sentence at-issue further provides context demonstrating that Sauerwein's subsequent e-mail to Brown shortly after his exchange with Smith violates Section 8(a)(1) of the Act as alleged in the Complaint.

Further, the circumstances in this matter are readily distinguishable from *Roemer Industries, Inc.*, 367 NLRB No. 133, *slip op.* at 5 (May 23, 2019) as referenced in Respondent's Motion. In *Roemer*, respondent's counsel made assertions in its post-hearing brief based on evidence not contained in the record. Unlike *Roemer*, the General Counsel's brief is supported by the record evidence and is based on Smith's testimony clearly contained in the record.

Accordingly, Respondent's Motion to Strike a Portion of General Counsel's Post-Hearing Brief is unfounded and its request that the General Counsel file an amended brief is unwarranted.

Accordingly, the General Counsel requests that Respondent's Motion be denied.

Dated at Cleveland, Ohio this 2nd day of December 2019.

Respectfully submitted,

/s/ LerVal M. Elva

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PROOF OF SERVICE

I hereby certify that I served the foregoing General Counsel's Opposition to Respondent's Motion to Strike on all parties by e-mailing true copies thereof on December 2, 2019 to the following at the addresses listed below:

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