

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

AMPERSAND PUBLISHING, LLC d/b/a
SANTA BARBARA NEWS-PRESS

and

GRAPHIC COMMUNICATIONS
CONFERENCE, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

CASE 31-CA-028589
31-CA-028661
31-CA-028667
31-CA-028700
31-CA-028733
31-CA-028734
31-CA-028738
31-CA-028799
31-CA-028889
31-CA-028890
31-CA-028944
31-CA-029032
31-CA-029076
31-CA-029099
31-CA-029124

**RESPONDENT AMPERSAND PUBLISHING LLC D/B/A SANTA BARBARA NEWS
PRESS'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGE'S DECISION AND RECOMMENDED SUPPLEMENTAL ORDER**

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Pursuant to Section 102.46 of the National Labor Relations Boards' Rules and Regulations, Respondent hereby submits its Brief in Support of Exceptions to the September 4, 2020 Decision of the Administrative Law Judge (the "ALJD") in the above-captioned cases:

I. INTRODUCTION AND STATEMENT OF THE CASE

The instant Decision of the Administrative Law Judge (the "ALJD") arises out of a compliance proceeding focused on a few narrow issues: whether the Union was entitled to certain alleged bargaining costs and expenses, the appropriate backpay and interim expenses that should be awarded employees, including Dennis Moran and Richard Mineard, and the amount of damages for certain violations concerning merit pay increases and the use of non-unit employees. Respondent does not contest that certain costs and backpay amounts are owed nor is it trying to avoid its obligations pursuant to the Board's orders. Respondent, however, presented legitimate and good faith factual and legal bases to the Union's Specification which the ALJ wholly dismissed in awarding the Union every single penny it sought in its Amendment to the Specification despite the fact such an award is contrary to law. Accordingly, Respondent respectfully requests that the Board reverse the ALJD and reduce the amounts awarded therein as set forth below.

II. ISSUES PRESENTED

A. Whether the ALJ erred in concluding that the Union is entitled to legal fees.
[Exceptions 1, 2, 3, 4, 5]

B. Whether the ALJ erred in concluding that Respondent did not meet its burden to demonstrate that Richard Mineard failed to mitigate his damages after he admittedly quit looking for employment. [Exceptions 12,18, 19, 22]

C. Whether the ALJ erred in concluding that Respondent did not meet its burden to demonstrate that Dennis Moran failed to mitigate his damages after he voluntarily quit a higher paying job. [Exceptions 12, 13, 14, 15, 16, 17, 23]

D. Whether the ALJ erred in recommending that the Union be reimbursed for the full amount of costs and expenses it sought even though it could not substantiate certain costs and included costs it is not entitled to under the law. [Exceptions 5, 6, 7, 8, 9, 10, 11, 24]

E. Whether the ALJ erred in refusing to provide any remedy for the Union’s admitted spoliation of evidence. [Exceptions 5, 6, 7, 8, 9, 10, 11]

F. Whether the ALJ erred in refusing to allow Respondent to question the Union about the reasonableness of their expenses. [Exceptions 5, 6, 7, 8, 9, 10, 11]

G. Whether the ALJ erred in prohibiting Respondent from presenting evidence regarding any damages attributable to a failure to provide merit pay increases. [Exception 20]

H. Whether the ALJ erred in prohibiting Respondent from presenting evidence that the use of nonunit employees did not decrease the use of unit employees. [Exception 21]

III. ARGUMENT

A. The Union Sought Bargaining Costs and Expenses to Which it is Not Entitled

1. The Union is Not Entitled to Recover Its Legal Fees

No matter how the Union attempts to phrase its claim to legal fees, case law is clear that a Union is not entitled to recover legal fees and claim those to be costs and expenses. *See, e.g., HTH Corp. v. NLRB*, 823 F.3d 668 (DC Cir. 2016); *Camelot Terrace v. NLRB*, 824 F.3d 1085 (DC Cir. 2016). Despite the ALJ’s casual dismissal of the foregoing authority, *HTH Corp* is precisely on point and controlling. **In fact, the instant ALJD is the only negative citation reference listed on Westlaw, and only one that refused to follow *HTH Corp* precedent.**

United States Court of Appeals, District of Columbia Circuit | May 20, 2016 | 823 F.3d 668 | 206 L.R.R.M. (BNA) 3302 | 422 U.S.App.D.C. 352 | 166 Lab.Cas. P 10,898 (Approx. 21 pages)

The KeyCited document has been negatively impacted in the following ways by events or decisions in the same litigation or proceedings:

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Treatment	Title	Date	Type	Depth	Headnote(s)
<input type="checkbox"/> Distinguished by	<p>1. AMPERSAND PUBLISHING, LLC D/B/A SANTA BARBARA NEWS-PRESS AND GRAPHIC COMMUNICATIONS CONFERENCE, INTERNATIONAL BROTHERHOOD OF TEAMSTERS MOST NEGATIVE 2020 WL 5353966, N.L.R.B. Div. of Judges</p> <p>Dickie Montemayor, Administrative Law Judge. This compliance proceeding was tried before me on December 10-13, 2019, and February 11-12, 2020, in Los Angeles, California. The...</p>	Sep. 04, 2020	Administrative Decision		—

In *HTH Corp.*, the D.C. Circuit held that the Board, as a creature of statute, had only those powers conferred upon it by Congress, and that pursuant to the American law attorney fees' were not recoverable as costs nor was the Board granted any punitive powers. *Id.* at 679-80 (“as we said in *Unbelievable*, “The Supreme Court has consistently invalidated Board orders that are not directly related to the effectuation of the purposes of the Act or are punitive.”) In reaching this result, the Court specifically rejected the Union’s argument that the General Counsel and the Union were forced to squander resources on this case, and thus the fee award merely “helps restore the parties to where they would have been but for the [company's] unlawful conduct,” which is starkly similar to argument the Union made here and the ALJ accepted. However, the ALJ’s decision specifically ignores the Court’s reasoning in *HTH Corp.*:

we recognize that compensation and punishment are not inherently mutually exclusive goals. But in the context of the American rule, any attempt to rest on the compensatory character of a fee award runs into the basic underpinning of the American rule, namely, the idea that the compensatory functions of fee shifting collide, in the litigation context, with other values, particularly broad freedom to assert rights and defenses. *See Summit Valley Indus. Inc. v. Local 112*, 456 U.S. 717, 724–25, 102 S.Ct. 2112, 72 L.Ed.2d 511 (1982). Thus we said in *Unbelievable*, “To the extent that the Board is relying upon the idea that a party is not made whole unless it recovers its attorney's fees, ... that is but a criticism of the American Rule—indeed, a criticism that the Supreme Court has heard and rejected.” 118 F.3d at 805. As the Supreme Court declared in *Chambers*, “That the award ha[s] a compensatory effect does not in any event distinguish it from a fine for civil contempt, which also compensates a private party for the consequences of a

contemnor's disobedience.” 501 U.S. at 53–54, 111 S.Ct. 2123 (citation and internal quotation marks omitted). See also *id.* at 54 n. 15, 111 S.Ct. 2123.

The Board's opinion also says that the fee award “protects the integrity of our processes, serving as a deterrent to violations” of its Order and protecting the parties' rights (presumably by way of deterring further unfair labor practices). *HTH Corp.*, 361 N.L.R.B. No. 65, App. 4. But in the context of identifying the powers granted the Board, the Court has rejected deterrent purposes precisely on the ground of their overlap with punitive goals. When the Board tried to order an employer to compensate government relief agencies whose expenditures had been increased as a result of the employer's violations, the Court firmly rejected the Board's reliance on deterrent effect. If “a deterrent effect is sufficient to sustain an order of the Board, it would be free to set up any system of penalties which it would deem adequate to that end.” *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 12, 61 S.Ct. 77, 85 L.Ed. 6 (1940).

Nor does the law draw a distinction between legal fees the Union claims is connected to “bargaining activities” as opposed to litigation-related fees. Indeed, neither the Union nor ALJ pointed to any authority upholding this distinction.

Instead, the ALJ dismissed the above controlling case law out of hand, concluding that since the Board did not specifically include any “exception” in its order requiring Respondent reimburse the Union for its “bargaining expenses.” then legal fees and costs were also recoverable. ALJD at 4:10-33. However, this is nonsensical. As set forth above, the Court has already determined in *HTH Corp* and *Camelot* that a Union is not entitled to recover its legal fees as costs and expenses. Thus, there was no reason for the Board to include an “exception” in

its order essentially telling the ALJ it must follow the law and not award legal fees as costs as already set forth in precedent. Nor can the ALJ provide any authority contradicting *HTH Corp* or *Camelot* or any authority indicating the ALJ is authorized to award legal fees as costs and expenses despite the well-established American Rule. Indeed, the ALJ's decision makes clear he is awarding these legal fees as punishment for Respondent's purported "aggravated misconduct," which is not permitted. ALJD at 4:18-33. Therefore, the Union's purported bargaining costs must be reduced by \$42,119.00 given that legal fees are not recoverable as costs.

Even if the Union did have some legal basis for claiming to be entitled to recover fees of its lawyer in what it claims are bargaining activities (it does not), many of Union lawyer Ira Gottlieb's time entries had no relation to bargaining on their face (rather than litigation), and given the overlapping bargaining and litigation issues he was dealing with at the time, he could not confirm whether his time was spent on litigation or bargaining issues. (Tr. at 234-35.) One such example is "draft email to Caruso re bad faith bargaining prep" on 4/22/2008. See GC Exh. 1(u) at 12 of 26 (Tr. 30:1-13).

Contrary to the ALJ's implied suggestion, this request for proof of these expenses is neither unreasonable nor unfair; rather, it is a matter of carrying one's burden that one is actually entitled to the expense he/she/it seeks. Indeed, while the ALJ again dismissed Mr. Gottlieb's failure to recall certain entries out of hand, he also erroneously concluded that given Respondent engaged "in willful defiance of its statutory obligations" any ambiguities must be resolved against Respondent. ALJD at 5:1-17. However, this only further confirms that the award is intended to be punitive in nature, which the Board may not do. As such, if any legal fees are

awarded at all (and under precedent they cannot be), they should be reduced by \$11,239.50 to reflect the amount Mr. Gottlieb could not confirm related to bargaining activities.¹

2. The Union Should Not Be Able to Recover A Portion of Union Negotiator Nicholas Caruso's Salary

As part of the Compliance Specification, the Union also sought to recover a portion of the salary of its union staff representative, Mr. Caruso, who was based in Minnesota². However, Mr. Caruso admitted at the hearing that (1) he did not know how much time he spent working on bargaining relating to the instant cases; (Tr. 447) (2) he did not keep time records of any kind with respect to these matters (Tr. 447-448); (3) he could not go back and quantify how much time he spent on these cases (Tr. 449); (4) he would have been paid his full salary whether or not he had worked on these cases (Tr. 514-16), and (5) he worked on multiple matters a day (Tr. 545-546). With respect to his salary he testified:

Q Understood. So let me ask it a different way. Your salary is not an expense that the Union directly allocates to the Santa Barbara News-Press. It's just admin, right?

A The -- my salary doesn't change based on what I'm doing, if I'm at the Santa Barbara News-Press or somewhere else.

Q So in 2007, your salary was going to be what it was going to be, whether or not you were involved in Union negotiations for the Santa Barbara News-Press, right?

A That's correct.

¹ The ALJ also improperly sustained numerous objections to Respondents' questions regarding the reasonableness of Mr. Gottlieb's hours. (Tr. 228:1-23)

² The ALJ prohibited Respondent from inquiring into the reasonableness of using an out of state negotiator as well. (Tr. 105-109)

Q The Santa Barbara News-Press had no influence whatsoever -- let me ask it a different way. The fact that you were working on the Santa Barbara News-Press project in 2007 made no difference either way as to the amount of your salary.

A That is correct.

Q And the same is true of 2008?

A That is correct.

Q And the same is true through -- the same is true of 2009, right?

A Yes.

Q Okay. Was there any part of your compensation that was tied directly to your work on the Santa Barbara News-Press matter?

A My expenses.

Q Okay. Separate and apart from hard expenses -- I understand that part. Separate and apart from hard expenses, was there any other part of your compensation, financial remuneration, that was tied in any way to the fact that you were working on the Santa Barbara News-Press matter?

A Are you speaking to wages and benefits?

Q Correct.

A Yeah. No.

Q Okay. Anything other, even outside the scope of wages and benefits -- any part of your compensation or financial remuneration other than hard expenses that is directly tied to your work on Santa Barbara News-Press?

A Not that I can think of.

Q Okay. And is that true of 2007?

A Yes.

Q 2008?

A Yeah.

Q 2009?

A Yes. (Tr. 514-16.)

Given that Mr. Causo admitted under oath (a) he had no way of determining the time he actually spent on bargaining in these matters, and (2) his salary in no way depended on his bargaining on these cases, such uncertain, speculative and punitive damages are not recoverable. *See FMD Restoration, Inc. v. Baistar Mechanical, Inc.*, 194 F.Supp.3d 118, 129-130 (D.C. 2016) (“[D]amages cannot be awarded on the basis of mere speculation or guesswork”). For all of the foregoing reasons, the bargaining expenses award should be reduced by \$22,204.49 given these amounts are speculative and not tied to any conduct of Respondent.

3. The Union Admittedly Spoiled Evidence Regarding Expenses for Which It Seeks Reimbursement

There is no dispute that the Union spoiled evidence in this matter after it had initiated legal proceedings against Respondent which were ongoing and in which it was seeking reimbursement of its costs. Despite this and despite the fact that one has a duty to preserve documents including deleting any automated or periodic destruction of the same, the Union admitted to shredding the receipts for costs for which it is seeking in this action. The Union testified as follows:

Q All of the American Express records from eight years or older are gone?

A Correct.

Q Okay. And did anybody advise you before you shredded those documents that there was ongoing litigation with the Santa Barbara News Press at the time you chose to shred those records?

A No.

Q Did anybody advise you whether or not you should shred those records?

A No, because it's our standard process.

Q Did anybody ever advise you that you should halt the shredding of records relating to Santa Barbara News Press?

A No.

Q Okay. And just so we're clear, that box contained expense records relating to Santa Barbara News Press, right?

A Yes. (Official Trans. at 117-18.)

Q BY MR. FROST: So at the time that you decided to shred the Santa Barbara News Press records, you knew there was ongoing something with Santa Barbara News Press because you were getting legal bills for it, correct?

A Correct.

Q And you chose to shred the records anyway?

A Yes.

Q Okay. So going back to Exhibit 324 then, the backup for Exhibit 324 was in the American Express file, correct?

A The backup for the American Express bills were for -- were with the American Express files. The cash receipts, those that were paid out of pocket, were attached to the expense report and filed in a big Gecko expander file.

Q Okay. And I see there's expenses on here where it identifies it as being the American Express as being the basis for the payment. So for all --

A Yes.

Q -- those, you've got no backup anymore, right?

A Correct. (Official Trans. at 126-27.)

In its Decision, the ALJ dismissed this evidence out of hand ruling that since there was no evidence of bad faith in the destruction, there was no reason to reduce the Union's expenses. ALJD 9:1-9. However, this conclusion wholly misstates the law. Indeed, bad faith is not required in order for sanctions to be imposed for the destruction of admittedly relevant evidence; mere negligence is enough, which is apparently what happened here based on the Union's testimony above. *See Mannina v. District of Columbia*, 437 F. Supp. 3d 1, 12 (2020) ("A party may have a 'culpable state of mind' that would support a finding of potentially sanctionable spoliation even if the party did not act in bad faith or purposefully destroy records... Mere negligence may suffice to impose sanctions such as an adverse evidentiary inference.")

The ALJ further concluded that any "uncertainty" regarding the amount of the Union's expenses should be determined against Respondent. ALJD 9:25-27. However, it is well established that uncertain or speculative damages are not recoverable as set forth above and that any award must be intended to compensate the Union rather than punish Respondent.

4. Respondent Was Wrongfully Prohibited from Inquiring Into The Reasonableness of the Union's Expenses

Finally, the Union should not be awarded expenses that were not reasonable, including airfare and hotels. The Union is a national union. They have offices across the country. It is purely punitive to demand that Respondent bear the burden of Union expenses incurred solely because the Union decided to use a negotiator who lives thousands of miles away rather than using a local office. Respondent attempted to raise this issue at the hearing, but was improperly precluded from laying the proper foundation:

Q Okay. And in your work at the Union, have you come to learn where the Union has offices?

A Yes.

Q And do they have any offices in California?

MS. DURKIN: Objection. Relevance and outside the scope of direct.

JUDGE MONTEMAYOR: What's the relevance, Counsel?

MR. FROST: It goes to the reasonableness of the expenses that the Union chose a representative located in Minneapolis to conduct the negotiations rather than somebody who was local, if they're going to now claim that they're entitled to recover those expenses.

MS. DURKIN: Your Honor, I want to suggest, though, that these proceedings are not to relitigate the bargaining decisions the Union made, who to have at the table, when, and where, but just the facts of the expenses that were incurred based on those decisions.

MR. FROST: But it also --

MS. DURKIN: The Board did not set any limitations to its remedy that expenses could only be incurred if local reps, for example, bargained the case, or if people

didn't travel. There were no limitations, and we're not relitigating the Union's decision process as to who to have at the table and why and when. We're simply here to determine what were the expenses that were incurred in that process.

MR. FROST: No, we're not. We're here to determine the reasonable expenses during that time, and we have the right to question whether or not these expenses both were incurred and whether they were reasonable; whether they should've been incurred.

There is no limitation on the order that you're seeking to enforce. There is no limitation on the order in terms of what we can and cannot cross-examine these witnesses about relating to the reasonableness of those expenses.

MS. DURKIN: I want to clarify how reasonableness comes into play here. Mr. Frost is correct: There is no limit on the Board's order. The remedy did not specify that the Union is owed costs and expenses that it reasonably incurred. There's no reasonableness limitation on the remedy.

The way reasonableness comes into play is that we show our calculations of those amounts owed, that we used reasonable calculations to approximate the bargaining expenses.

MR. FROST: That's one of the ways to determine reasonableness, but there's --
JUDGE MONTEMAYOR: I'm going sustain the objection. Move on. (Tr. at 105-08).

Had Respondent been allowed to inquire into these issues, it would have been able to establish that it is neither fair nor reasonable to make Respondent pay the expenses for the Union to fly and house a remote representative when they had local representatives who could have

handled this matter, and according such costs act to punish Respondent. The cost of hotels and airfare (found in the airfare and hotel columns of GC Exh. 1(u) at pages 20-25) would reduce the claimed Union expenses by \$15,982.44.

B. The Moran and Mineard Backpay Calculations Must Be Reduced Under Controlling Law

It is undisputed that a discriminatee must make reasonable efforts during the backpay period to seek and to hold interim employment. A discriminatee may not be awarded backpay for any period within the backpay period during which it is determined that he failed to make a reasonable effort to mitigate. *See, e.g., Painters Local 419*, 117 NLRB 1596, 1598 n.7 (1957); *Gimrock Constr.*, 356 NLRB No. 83 slip op. at 11 (2011) . Indeed, to advance "the healthy policy of promoting production and employment," a striker, for example, must make a reasonably diligent search for suitable interim employment and must accept such employment if offered. *See Phelps Dodge Corp. v NLRB*, 313 US 177 (1941). Further, backpay is routinely denied in cases where a discriminatorily discharged employee: (1) fails to remain in the labor market during the period for which backpay was claimed, (2) refuses to accept substantially equivalent employment, (3) fails to search diligently for alternative work, (4) voluntarily quits suitable alternative employment, (5) chooses a lower paying job and refuses to search for a higher paying job. *See e.g. J. H. Rutter Rex Mfg. Co. v NLRB*, 473 F.2d 223 (5th Cir. 1973); *NLRB v Madison Courier, Inc.*, 505 F.2d 391 (DC. Cir. 1974) (refusing to award backpay as public policy was best served by encouraging a skilled and healthy worker to obtain a job rather than remain idly unemployed for 18 months); *NLRB v Southern Silk Mills, Inc.*, 242 F.2d 697 (6th Cir. 1957) (finding the failure of two employees to seek or take other suitable, available employment, although at a lower rate of pay, over a period of approximately 3 years, constituted, to some extent at least, a loss of earnings "willfully incurred," thus the Board was in error in

making the backpay awards without offsetting credits against the employees' losses.) Here, there are several bases supporting Mineard's and Moran's failure to mitigate their damages.³

1. Mineard's Backpay Calculations Must Be Reduced Because He Voluntarily Quit Looking for Equivalent Employment

First, Mr. Mineards admitted that he sought out a job that was not reasonably equivalent (part time as a freelancer - Tr. at 343-45), and then stopped looking entirely for an equivalent job when he began receiving a SAG AFTRA pension and Social Security Benefits by at least 2017:

Q BY MR. FROST: Okay. So did you apply for any jobs in 2017?

A No.

Q Why not?

A Because I'm very happy at the "Montecito Journal," and plus the fact that I'm now also getting Social Security. I also get pension from SAG-AFTRA from my TV career, so I have enough funds coming in that I can manage. And I'm happy with that situation.

(Tr. at 354)

Q. Okay. Do you still have a copy of a resume?

A Well, not really because I've not had to look for a job so I mean, but it would certainly give my background in London and New York and LA and obviously including my job -- the job at the News-Press.

³ It is undisputed that neither Moran nor Mineards maintained any of their records or evidence of their search for a new job even though they knew that they were pursuing backpay. (Tr. at 645-46, 648, 410-11). While the ALJ cites to cases permitting a discriminatee to rely solely upon his or her own testimony (ALJD at 13, n. 4), this rule flies in the face of the law on spoliation and preservation of evidence, which dictates that one has a duty to preserve relevant evidence and not destroy it.

Q For purposes of what we're doing right now, I don't really care what's in it.

A Okay.

Q I just want to know where the copy is. When is the last time you had a copy of a resume?

A Oh, gosh, it would have been many, many years ago. I can't be precise. I -- obviously, I'm not looking for a job so I don't have copies of a resume now.

(Official Trans. at 421-22.)

Q Did you apply for any jobs in 2016?

A I can't recall.

Q Did you apply for any jobs in 2015?

A I can't recall, but I think probably not.

Q How about 2014?

A That, I can't recall.

Q 2013?

A Ditto.

Q 2012?

A I can't recall now.

Q 2011?

A Same thing.

Q Don't recall?

A I don't recall.

Q And you don't recall what jobs you applied for, or you don't recall whether you even applied for any?

A I don't recall, one, the jobs I applied for, and I don't recall whether I did or not.
(Tr. at 355-56.)

Based on the foregoing case law, Mr. Mineard's unilateral decision to quit looking for a comparable job is precisely the type of situation where backpay should be denied or at least reduced substantially beginning with the time period he admittedly stopped looking for work. In other words, given this testimony, if Mr. Mineard is awarded any backpay, his right to receive backpay should end at the close of the fourth quarter of 2010.

2. Moran Should Not Be Allowed To Recover Backpay for the Time Period After He Voluntarily Quit His Comparable Position

NLRB authorities are also clear that a person may not claim backpay after the time that he or she chooses to voluntarily quit a reasonably comparable position. *See, e.g., Grosvenor Resort*, 350 NLRB 1201 (2007); *Kentucky River Medical Center*, 352 NLRB 194 (2008).

Although the ALJ found that Mr. Moran's decision to quit his job was reasonable (a burden the General Counsel is required to satisfy, *see, e.g., Pope Concrete Products*, 312 NLRB 1171 (1993)) [ALJD at 13], that is simply not the case. Mr. Moran conceded that he quit voluntarily, and through no compulsion, threat, or unreasonable working conditions. In fact, his employer told him that he was improving and moving in the right direction.

Q So when you were working at ABC-CLIO, that job ended by your choice, right?

A Yes.

Q You voluntarily quit that position?

A Yes.

(Tr. at 648-49.)

Q After the time that your supervisor told you that she was happy with you and seeing this marked improvement in your performance, did she ever indicate to you that you were at risk of termination?

A No.

Q Okay. So at the time you left, you left voluntarily, right?

A Yes, with the considerations that I expressed.

Q You made the choice to leave, right?

A Yes. (*Id.* at 650-51.)

Most telling, at the time Mr. Moran decided to voluntarily leave this position, according to the NLRB's own calculations, he was making more money than he had made with Respondent. See GC Exh. 1(f). As a result, his backpay should cut off at the beginning of the first quarter of 2014.

C. Respondent Was Wrongfully Prohibited from Presenting Evidence regarding Damages as to the Board's Remedies for Merit Pay and Use of Non-Unit Employees

Respondent does not dispute that the Board granted partial summary judgment as to certain remedies related to Merit Pay and Use of Non-Unit Employees. However, the Board did not decide the damages stemming from these violations, which were subject of the compliance hearing. Despite this fact, the ALJ prohibited Respondent from presenting evidence that (1) non-unit employees did not take hours away from any unit employees hence any damages in this regard would be solely punitive, which is prohibited, and (2) given the financial nature of the newspaper business merit pay increases are simply unfeasible and would not have been provided to anyone over the relevant time frame. This was improper, and therefore, the order should be

reduced by \$936,005.00. Alternatively, the Hearing Officer should re-open the hearing to hear evidence on this issue.

IV. CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that the Board set aside the ALJD in its entirety or reduce the amounts awarded in the ALJD as required by controlling case in the amounts set forth above.

Dated this 2nd day of October, 2020.

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **RESPONDENT AMPERSAND PUBLISHING LLC D/B/A SANTA BARBARA NEWS PRESS'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION AND RECOMMENDED SUPPLEMENTAL ORDER** was served by U.S. Mail, E-Mail and E-Filed, on the parties whose names and addresses are listed below:

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