UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
----------X
COFIRE PAVING CORP.

and

CASE NO.:
29-CA-27556

LOCAL 175 UNITED PLANT &
PRODUCTION WORKERS.
----------X

ANSWERING BRIEF TO GENERAL COUNSEL'S CROSS EXCEPTIONS AND REPLY BRIEF IN SUPPORT OF THE EXCEPTIONS FILED ON BEHALF OF COFIRE PAVING CORP.

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BACKGROUND

In its Brief to the Board, Counsel for the General Counsel asserts that the central issue in this case is of first impression. It asserts that the Board has never determined whether an Employer has a duty to maintain the status quo from the expired contract with a predecessor union (Local 731 f/k/a Local 1175) upon the intervening certification of a successor union (Local 175 United Plant & Production Workers.)(Counsel for the General Counsel Brief, p. 1)

As more fully set forth in its initial Exceptions and Brief, it is Respondent Cofire Paving Corp.'s ("Cofire") position that this issue was resolved by the Supreme Court in Burns International Security Services, Inc. v. NLRB, 406 U.S. 272, 281, fn.8, 92 S.Ct. 1571, 1579, 32 L.Ed.2d 61, 80 L.R.R.M. (BNA) 2225. In this regard, Burns and its progeny have held that, "It is well settled, that when a union is decertified, or when an employer transfers its business to a successor employer, the succeeding union or employer is not bound by a prior contract, even if the terms of the contract have not yet expired." American Sunroof Corporation-West Coast, Inc., 243 NLRB No. 172, 243

NLRB 1128, 1129-1130, fn. 5, 102 L.R.R.M. (BNA) 1086, 1979-80 NLRB Dec. P 16093, 1979 WL 9389 (N.L.R.B.); and Sanders Bus Lines, Inc., 256 NLRB 316, 256 NLRB No. 56, 1981 WL 20452 (N.L.R.B.), 107 L.R.R.M. (BNA) 1260, 1980-81 NLRB Dec. P 18,114.

In American Sunroof, at 1130, fn. 6, the Board cited American Seating Company, 106 NLRB 250 (1953) for the proposition that: "The same principle applies when an existing contract is held not to bar an election, and a new union becomes the representative of the employees previously covered by the contract."

Therefore, the Administrative Law Judge decision's that Cofire was required to maintain the status quo until an impasse was reached in bargaining or until the new union was decertified (ALJ Dec., p. 14, l. 45-48) was a clear departure from Burns, American Seating Company and their progeny and the Judge did not reconcile his holding with the aforementioned cases.

ANSWERING BRIEF TO COUNSEL TO THE GENERAL COUNSEL'S CROSS EXCEPTIONS

It is Cofire's position that the two exceptions filed by Counsel for the General Counsel are insufficient as a matter of law and that the two exceptions do not satisfy the Board's requirements to permit review of the Administrative Law Judge's finding that Cofire properly implemented its own health insurance plan for the bargaining unit employees. Sec. 102.46(b)(2) of the Board's Rules ("Any exception ... not specifically urged shall be deemed to have been waived."

In its Cross Exceptions, Counsel for the General Counsels excepts to only two (2) legal conclusions made by the Administrative Law Judge. In this regard, Counsel to the General Counsel argues that the Judge:

1. "... erred by failing to find that Respondent, by its substitution of its own health insurance plan, unilaterally changed terms and conditions of employment in violation of Section 8(a)(5) of the Act."
2. "... erred in concluding that Respondent's substituted health insurance plan was 'reasonable and appropriate.'"

Significantly, in the preceding paragraph of General Counsel's exceptions, Counsel for the General Counsel set forth that it:

> "... respectfully urges the National labor Relations Board to adopt those findings of fact and conclusions of law of the Administrative Law Judge to which the General Counsel takes no exception."

As Counsel for the General Counsel did not file any exceptions to the Judge's factual findings regarding Cofire's implementation of its office health insurance plan, the Judge's factual findings must be adopted by the Board. In ACS, LLC v. United Food and Commercial Workers International Union, Local 1096, 345 NLRB No. 87, fn. 3, 178 L.R.R.M. (BNA) 1450, the Board held that it considered a party's exceptions to be waived as to all other portions of the judge's decision, where the party failed to specify areas of disagreement with the judge's decision beyond the Judge's legal conclusion. Citing to Sec. 102.46(b)(2) of the Board's Rules ("Any exception ... not specifically urged shall be deemed to have been waived."). Accordingly, the Board concluded that although the party filed exceptions to the judge's legal analysis, there were no valid exceptions to the findings of the judge's decision dealing with the facts relating to those allegations. Id. at fn. 3.

Further, General Counsel has not excepted to any of the judge's credibility findings regarding Cofire's implementation of its own health insurance plan. As it is the Board's established policy not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the

Board that they were incorrect, the Judge's findings regarding Cofire's implementation of the office health insurance plan must not be disturbed. Standard Dry Wall Products, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951).

Therefore, the following findings of the Administrative Law Judge must be adopted by the Board and should not be disturbed:

1. However, because of Section 8(d) of the Act, the cessation of payments to those funds was in fact, required as of August 8, 2005, (the date of the Certification), because Local 1175/731 was decertified and replaced by Local 175. (ALJ Decision, p. 5, l. 25-27)
2. It is noted that the proposed Memorandum of Understanding, either in its original form or as revised, was intended to be an interim agreement and did not purport to be a final agreement or constitute a waiver by the Company or the Union or their respective rights to bargain for what they each believed would be a suitable collective bargaining agreement. Whether or not this proposed Memorandum of Understanding was a good, bad or mediocre idea, neither side was compelled, as a matter of law, to agree to its terms. *H.K. Porter Co. v. NLRB*, 397 U.S. 99 (1970). (ALJ Decision, p. 6, l. 29-35)
3. The Company refused to sign the proffered interim agreement. Ross Holland testified that he didn't think that it was in the Company's interest to sign the Memorandum of Understanding, in part because he didn't think that the payments of $3.77 per hour per employee that had been allotted to the previous health plan would be sufficient to cover the costs of continued coverage for equivalent benefits. (ALJ Decision, p. 6, l. 37-41)
4. I will note here that the cost to the Company of placing the employees into the Company's plan was greater than the amount of the contributions that the Company had been making on behalf of the employees to the Local 1175/731 plan. I also note that the company plan, while not providing for dental or optical benefits, does provide for comprehensive family coverage for medical and hospitalization costs. (ALJ Decision, p. 7, l. 9-13)
5. On October 31, 2005, Holland wrote a letter to the Union and its counsel, which stated:

    > When we met for negotiations on Friday October 21, 2005, one of the issues discussed was health insurance for the employees that you represent. It is my understanding that the Health Insurance coverage to which they were entitled from Local 1175 ceased on September 30, 2005 and they currently do not have any coverage.... I verbally offered to you to enroll the uninsured workers in our office health

> insurance plan with Empire Health Choice. According to our broker this enrollment can be made retroactive to October 1, 2005, so that there is no lapse in coverage. When the meeting ended I was advised that the offer would be conveyed to the employees and that you would respond to this offer. As of yet I have not received a response to this offer. Without any solicitation on my part, several employees have come to me and expressed their concern to me about the lack of health insurance as their spouses are facing potentially serious and costly health issues. For your review... I have enclosed a copy of the summary benefits of the health insurance policy that is currently in place, and if they so elect, the asphalt plant workers can enroll in. Please present this offer to these employees and provide me the response as soon as possible. There is a limited amount of time in which the employees can be enrolled and have the coverage made retroactive to October 1, 2005. (ALJ Decision, p. 7, l. 34-44, p. 8, l. 1-11)

6. Another meeting was held on November 2, 2005. At this time, Tomaszewski told Holland that the employees thought that the Company's health insurance plan was inferior to what they had previously enjoyed and that they wanted the Company to agree to use the Local 175 plan. When the Company refused to accept this proposal, Tomaszewski stated that the employees would accept the Company's insurance offer under protest. (ALJ Decision, p. 8, l.13-17)

7. On November 8, 2005, the Company received a letter under what purports to be the Union's letterhead. This stated:

> We the members of Local 175 are accepting the health coverage (temporarily) offered by Cofire Paving Corp., while contract negotiations continue. (ALJ Decision, p. 8, l. 41-45)

8. Soon thereafter, the Company placed the bargaining unit employees into the Company's health insurance plan and started making payments on their behalf to Blue Cross/Blue Shield. Whether or not the company's plan was exactly the same or even substantially equivalent as the previous union's plan with Oxford, the fact is that the costs for the Company were substantially higher than the $3.77 per hour per employee that the previous contract required. (ALJ Decision, p. 8, l. 19-23)

9. While it might have been expedient, or even a good idea for the Company to have agreed, on an interim basis, with Local 175's idea of making the same contributions to a newly created plan established by Local 175 for health insurance purposes, the Respondent simply had no legal obligations to do so. It legitimately could refuse to make such an interim agreement and perhaps did so because it felt that this would reduce its leverage in bargaining for a final contract. (ALJ Decision, p. 15, l. 16-21)

10. Since the Respondent could not continue to make contributions to Local 1175's health plan and did not have any legal obligation to make equivalent contributions to Local 175's plan, it had two other options. ... The second option was to provide an alternative health insurance plan that would provide more or less equivalent benefits. (ALJ Decision, p. 15, l. 23-27)

11. In the present case, the Company explored the option of providing an alternative health insurance plan, in part because one of its employees had a spouse who was diagnosed with cancer and whose treatment could not be covered under the old Union's plan because the employees could not retain their insurance under COBRA. Further, the option of simply making the payments in cash to the employees would have put the employee with the medical issue into the untenable position of trying to get family health insurance, on an individual basis, and with a pre-existing medical condition. (ALJ Decision, p. 15, l. 29-35)

12. It may be that putting the employees into its own BlueCross/Blue Shield plan was not exactly the same, in terms of covered medical services, as what the employees had enjoyed under the previous Oxford plan. But there is no question that the Company's plan, except for dental and optical benefits, provided the employees with comprehensive family medical and hospitalization insurance. Moreover, the cost to the Company was higher than what it had agreed to pay under the old contract to provide medical insurance to its employees with the decertified Union. (ALJ Decision, p. 15, l. 37-44)

It is Cofire's position that it was not legally permitted to submit welfare fund contributions to the Local 1175/731 Welfare Fund and/or the Local 175 Welfare Fund after the elections results were certified on August 8, 2005 until it reached a written agreement with Local 175.

After the certification of Local 175, Cofire had five meetings with the Union in September, October and November 2005. It was mutually agreed by the parties that the unit employees' health coverage was a primary topic of discussion and that both parties were under the assumption that the unit employees' health coverage was set to expire on October 1, 2005.

<u>The Local 175 Trust Fund Summary Plan Descriptions</u>

In General Counsel's Brief in Support of its Cross Exceptions, General Counsel argues that Local 175's proposed MOA, "offer the employees a certainty of continued coverage..." (Counsel for the General Counsel Brief, p. 3) General Counsel further suggests that Cofire had a viable option of maintaining the status quo through the MOA with Local 175. (Counsel for the General Counsel Brief, p. 10)

However, General Counsel' argument completely ignores the fact that throughout the course of negotiations Cofire never received the summary plan description for the Local 175 Welfare Fund. (T. p. 345, l. 3-9) At trial, Local 175's Counsel provided the following stipulation:

> Mr. Chaikin: "The Local 175 Pension, Annuity and Welfare Funds were created effective July 1, 2005; commenced receiving contributions from one or more firms, some of which were retroactive to July 1, 2005; that the trust agreements ... for the Pension, Annuity and Welfare plans were provided to Respondent, Cofire, however SPDs or summary plan descriptions were not available at the time of the request in that they're not required to be produced until after the Internal Revenue Service actually issues an approval of the plan, which they had not done at the time of the request." (T. p. 207, l. 24-25, p. 208, l. 1-9):
>
> Judge Green: "Okay. So the bottom line is what he wants, what Mr. Ziskin wants is an acknowledgement that such SPDs were not provided to Cofire during the negotiation period." (T. p. 208, l. 15-17)
>
> Mr. Chaikin: "That would be correct." (T. p. 208, l. 18)

Although Local 175 advised Cofire that it intended to "mimic" the "Cadillac" plan that was previously in effect with the Local 1175/731 Welfare Fund, Cofire was not presented with any description of benefits that would have been allegedly provided to the unit employees by the Local 175 Welfare Fund.

It is also undisputed that Cofire refused to sign two proposed Memorandum of Understandings prior to October 1, 2005. Further, it is undisputed that Cofire offered to

place the unit employees in the company's office health plan retroactive to October 1st and that such plan included Cofire's office personnel as well as Cofire's President Ross Holland. It is undisputed that Cofire's unit employees accepted the offer of health insurance by letter dated November 8th and that the unit employees were enrolled retroactively to October 1st. Although the Union denied that the November 8th letter was from actual union letterhead rather than letterhead created by the unit employees, it is also undisputed that the Union never disavowed the November 8th letter from the unit employees.

Finally, it is undisputed that the cost of Cofire's office health insurance plan for the five unit employees was $5,341.96 per month (Respondent's Ex. # 10, p. 2) In comparison, Cofire's monthly contribution to the Local 1175 Welfare Fund varied between $2,416.57 and $5,302.51 per month depending upon the hours worked by the unit employees. (T. p.358-359, p. 360, l. 1-4; Respondent's Exhibit 11) Between January 2005 and May 2005, Cofire's five consecutive monthly welfare contributions did not exceed $3,404.31 in any month and three months were below $2,746.45. (Respondent's Exhibit 11)

Thus, Cofire maintains that it lawfully implemented its health insurance proposal for numerous reasons, including that: (1) the unit employees were faced with a complete loss of health coverage effective October 1, 2005; (2) the Union failed to provide the summary plan description for the Local 175 Welfare Fund to Cofire; (3) on union letterhead, the unit employees accepted the offer of health coverage that was communicated to the Union; (4) Cofire's relationship with its broker and insurance carrier permitted the company to backdate the plan to October 1st; (5) the plan was an

existing plan that included Cofire's President; and (6) the cost of the health insurance plan to Cofire was significantly greater than its prior costs..

Although Cofire maintains that the expired collective bargaining agreement became inoperative on the decertification date, it should be further noted that the cost of the health insurance for the unit employees substantially exceeded Cofire's previous health insurance costs for the unit employees who had been enrolled in the Local 1175 Welfare Fund.

General Counsel's allegation that the medical benefits are not substantially equivalent to the health benefits previously enjoyed by the unit employees is without merit for the following reasons: (1) the benefits previously available from the 1175 Welfare Fund were no longer available after the decertification; (2) Local 175 failed to provide Cofire with the Local 175 Welfare Fund summary plan description which would have allowed Cofire the opportunity to verify the new plan's benefits; (3) there is no evidence in the record that the Local 175 Welfare Fund benefits would have been comparable to the Local 1175/731 welfare fund benefits; and (4) the cost of the company's office health plan exceeded the cost of the prior plan.

Lastly, the Administrative Law Judge made the following comments during the trial with respect to the issue of "equivalent benefits":

> "I mean I don't see how the Board is in a position to determine whether or not one plan is qualitatively better than another plan objectively." (T. p. 215, l. 25, p. 216, l. 1-2)
>
> "My opinion about this is that at best you could say that the cost, the cost that the company pays should be put into, you know, set aside to be put into some future agreed upon plan or just given to the employees and let the employees do with it. The remedy in this case is not going to be for the company to create an exact copy replica of the Oxford plan. (T. p. 218, l. 12-21)

> "...the NLRB is not in a position of micromanaging what particular plan this company is required to substitute for a previously existing plan." (T. p. 218, l. 23-25)

Thus, the record does not reveal that Cofire failed and refused to secure, or attempt to secure, medical benefits for the Unit that are substantially equivalent to the benefits it had previously enjoyed pursuant to the collective bargaining agreement between Cofire and Local 1175. It is urged that Cofire has not violated Sections 8(a)(1) and (5) of the Act by failing and refusing to bargain collectively and in good faith with the Union regarding health insurance benefits.

REPLY BRIEF

Issue 1: The evidence in the record and the applicable law does not support the Administrative Law Judge's finding that that Cofire violated Section 8(a)(1) & (5) of the Act by unilaterally changing the terms and conditions of employment for its employees by failing to pay directly into its employees paychecks the amounts of money that the company had previously paid to a pension and an annuity plan. (Exceptions one (1) through thirty (30))

In its conclusion, Counsel for the General Counsel asserts that, "An employer can change "agents" by selling to another entity, but that doesn't mean that its obligation to bargain is distinguished. (Counsel for the General Counsel Brief, p. 14) Although General Counsel's analogy may be correct that the successor employer's obligation to bargain is not distinguished, it does not follow that a successor employer is required to maintain the status quo.

As mentioned above, in Burns International Security Services, Inc. v. NLRB, 406 U.S. 272, 281, 92 S.Ct. 1571, 1579, 32 L.Ed.2d 61, 80 L.R.R.M. (BNA) 2225, the Supreme Court held that where the bargaining unit remains unchanged at the time of change in employers, and a majority of the employees hired by the new employer are

represented by the recently certified bargaining agent, the National Labor Relations Board is entitled to order the new employer to bargain with the incumbent union. National Labor Relations Act, §§ 8(a) (5), (d), 9(a) as amended 29 U.S.C.A. §§ 158(a) (5), (d), 159(a). The Court further noted that:

> "It does not follow, however, from Burns' duty to bargain that it was bound to observe the substantive terms of the collective-bargaining contract the union had negotiated with Wackenhut and to which Burns had in no way agreed. Section 8(d) of the Act expressly provides that the existence of such bargaining obligation 'does not compel either party to agree to a proposal or require the making of a concession.'" Id. at 281-282.

Significantly, the Burns Court referred to the very issue in the instant case when it concluded that a successor employer merely has the duty of bargaining with his predecessor's union and is not bound by the substantive provisions of a collective-bargaining contract negotiated by their predecessor. Id. at 284. Specifically, the Burns Court stated that:

> "FN8. **When the union that has signed a collective-bargaining contract is decertified, the succeeding union certified by the Board is not bound by the prior contract, need not administer it, and may demand negotiations for a new contract, even if the terms of the old contract have not yet expired.** (Emphasis added) American Seating Co., 106 N.L.R.B. 250 (1953); Farmbest, Inc., 154 N.L.R.B. 1421, 1453--1454 (1965), enf. with mod. sub nom. Farmbest, Inc. v. NLRB, 370 F.2d 1015 (CA8 1967); see also Modine Mfg. Co. v. Grand Lodge International Association on Machinists, 216 F.2d 326 (CA6 1954). The board has declined to overturn its 'long standing' American Seating rule after Burns. General Dynamics Corp., 184 N.L.R.B. No. 71 (1970)." Id. at 284.

In Bayshore Electrical Supply Co. and Amalgamated Union Local 355, 1992 WL 1465459 (N.L.R.B. Div. of Judges) Administrative Law Judge Green set forth:

> "... that after a contract expires, an employer may not unilaterally change the existing terms and conditions of employment as embodied in the expired contract, (insofar as they relate to mandatory subjects of bargaining), without first bargaining in good faith to a new agreement or impasse, **unless it lawfully is discharged from its obligation to bargain;**

> **for example if the union were to be decertified or replaced by another union under the election procedures established by the Board."** (Emphasis added)

Moreover, Section 8(d) makes it clear that an employer may terminate or modify a collective bargaining agreement without abiding by the requirements set forth in Section 8(d)(2)(3)and (4) of the Act "upon an intervening certification of the Board, under which the labor organization ..., which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a)." (Emphasis added) Such language unequivocally applies in the context where a decertified union is replaced by a newly certified union.

In American Seating Company, 106 NLRB No. 44, 106 NLRB 250, 262, 32 L.R.R.M. (BNA) 1439, 1953 WL 10942 (N.L.R.B.), the Trial Examiner concluded that a collective bargaining agreement does not continue upon an intervening certification, because if an agreement did continue in such circumstances, there would be as much need for Section 8 (d) (2), (3), and (4) as in any other contract situation. (The Board did not pass judgment upon the Trial Examiner's interpretation of Section 8 (d). Id. at 256.)

Pursuant to Section 8(d) of the Act, the Board cannot require Cofire to maintain the terms and conditions that were set forth in Cofire's expired agreement with the predecessor Union. This provision permitted Cofire to terminate and/or modify the terms and conditions of the expired collective bargaining agreement when Local 1175 was decertified and replaced by Local 175, the superseding union, pursuant to the Board's election procedures. Thus, Cofire was free to terminate and/or modify the welfare, pension, annuity and vacation provisions contained in the prior contract.

Additionally, Cofire asserts that after bargaining with Local 175 commenced, it could not unilaterally decide to reallocate the pension and annuity benefits previously provided to unit employees, as such action would have constituted a violation of Section 8(a)(1) and (5) of the Act. As it is undisputed that Local 175 has sought an agreement with Cofire that would require the company to retroactively submit pension and annuity contributions to the August 8th certification date, it would be contrary to Section 8(a)(5) for Cofire to impose its own pension and/or annuity plan until an agreement or impasse is reached.

Issue 2: The evidence in the record and the applicable law does not support the Administrative Law Judge's finding that that Cofire did not agree to provide a Pension, Annuity or Welfare Plan in its prior agreement with Local 1175. (Exceptions thirty-one (31) through forty-eight (48))

The Board is respectfully referred to Cofire's initial Brief and Exceptions as it pertains to this issue, inasmuch as Counsel for the General Counsel has not offered any argument in opposition to Cofire's position that the company had agreed to the establishment the Local 1175 Pension, Welfare and Annuity Trust Funds which are specifically provided for in the expired collective bargaining agreement.

Moreover, Counsel for the General Counsel does not argue that Board precedent prohibits the use of parol evidence to vary the unambiguous terms of collective bargaining agreements. In re America Piles, Inc., 333 NLRB 1118, 1119 (2001).

Issue 3: The evidence in the record and the applicable law supports a finding that economic exigencies permitted Cofire to take prompt action and make unilateral changes. (Exceptions forty-nine (49) through fifty-four (54))

The Board is respectfully referred to Cofire's initial Brief and Exceptions as it pertains to this issue. It should be noted that Counsel for the General Counsel brief does not dispute that Cofire's pension fund withdrawal liability was caused by external events

beyond the company's control and such liability was not reasonably foreseeable. Specifically, the employees' decision to replace Local 1175 with Local 175 caused Cofire's withdrawal from the Local 1175 Pension Fund. It was the unit employees' action that triggered the company's $250,000.00 withdrawal liability assessment. Further, it is significant to note that a precipitating event to this election was the formation of Local 175 by former union officials employed by Local 1175. While the company acknowledges the employees' section 7 rights to choose their representation, Local 1175 cannot be held harmless for their role in this scenario.

Issue 4: The evidence in the record and the applicable law supports a finding that the parties reached an impasse in the Fall of 2005, in part caused by the Most Favored Nations Clause contained in Local 175's collective bargaining agreements with Cofire's competitors. (Exceptions fifty-five (55) through sixty-six (66))

The Board is respectfully referred to Cofire's initial Brief and Exceptions as it pertains to this issue. It should be noted that Counsel for the General Counsel brief does not dispute that the "Most Favored Nations" clause contained in Local 175's agreements with Cofire's competitors did not allow the Union to effectively offer better terms and that Cofire was financially unable to accept the terms of the association agreement. J.D. Lunsford Plumbing, 254 NLRB 1360, 1365, 1370-1371 (1981).

Issue 5: The evidence in the record and the applicable law does not support the Administrative Law Judge's finding that Cofire and Local 175 agreed to include the asphalt "shipper" into the bargaining unit. (Exception sixty-seven (67) through seventy-two (72))

The Board is respectfully referred to Cofire's initial Brief and Exceptions as it pertains to this issue.

Issue 6: The evidence in the record and the applicable law supports a finding that Cofire is entitled to a credit where the cost to Cofire of placing the employees into the company's plan was greater than the amount of the contributions that the company had

been making on behalf of the employees to the Local 1175/731 Welfare Fund. (Exception seventy-three (73))

The Board is respectfully referred to Cofire's initial Brief and Exceptions as it pertains to this issue.

CONCLUSION

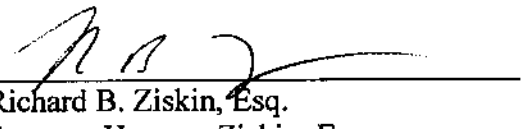
For the reasons set forth above, it is respectfully asserted that the Board affirm the Administrative Law Judge's finding that Cofire did not violate Section 8(a)(5) of the Act when it obtained the alternative medical plan for its employees.

It is further urged that the Board reverse the Judge's finding that Cofire violated Section 8(a)(1)& (5) of the Act by (1) unilaterally changing the terms and conditions of employment for its employees by failing to pay them, as a part of their existing wages, the amounts of money that it had previously paid to a pension and an annuity plan; and (2) unilaterally failing to pay its employees two weeks of vacation pay.

In sum, the Complaint should be dismissed in its entirety.

Dated: Commack, New York
February 5, 2007

THE ZISKIN LAW FIRM, LLP

By: 

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CERTIFICATE OF SERVICE

STATE OF NEW YORK)
COUNTY OF SUFFOLK)

I, Richard B. Ziskin, an attorney admitted to practice in the courts of the State of New York and in the federal district courts of the Southern and Eastern Districts of the State of New York, do hereby certify, under the penalties of perjury, that a true and correct copies of the Answering Brief to General Counsel's Cross Exceptions and Reply Brief in Support of the Exceptions filed on behalf of Cofire Paving Corp are served by mailing same in a sealed envelope, via overnight mail, with postage pre-paid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addresses as indicated below:

Eric B. Chaikin, Esq.
444 Madison Avenue, 17th Floor
New York, NY 10022

Local 175 United Plant & Production Workers
505 Northern Boulevard
Great Neck, NY 11023

National Labor Relations Board
Region 29
Two Metrotech Center North- 5th Floor
Jay Street & Myrtle Avenue
Brooklyn, NY 11201-4201
Att: Linda Harris Crovella, Esq.

Dated: Commack, New York
February 6, 2007

RICHARD B. ZISKIN (RBZ-7378)