

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

DPI NEW ENGLAND,

Respondent,

and

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 25

Charging Party.

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Case No. 1-CA-44833

**RESPONDENT'S ANSWER TO COUNSEL FOR THE GENERAL COUNSEL'S
LIMITED CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE
LAW JUDGE AND BRIEF IN SUPPORT THEREOF**

Respectfully Submitted;

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July 31, 2009

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I. PROCEDURAL STATEMENT

Pursuant to Section 102.46(d) of the Board's Rules and Regulations, the Respondent files the following Answering Brief to the Counsel for the General Counsel's Limited Cross-Exceptions and its Brief in Support Thereof.

II. ARGUMENT

The Board should not overrule its established precedent of awarding simple interest. As recently as two months ago, the Board considered and rejected the General Counsel's argument in favor of awarding compound interest. *See Family Healthcare, Inc. and Kristine McCallum*, 354 NLRB No. 29, at fn. 3 (June 4, 2009) ("Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest."). The Board has made identical statements in a litany of cases since September of 2001. *See for instance, Cadence Innovation, LLC*, 353 NLRB No. 77, slip op.

at 1, fn.1 (2009); *Goya Foods of Florida*, 352 NLRB No. 109, slip op. at 1, fn. 2 (2008); *Rogers Corp.*, 344 NLRB 504, 504 (2005); *Accurate Tool & Manufacturing, Inc.*, 335 NLRB 1096, slip op. at 2, fn. 1 (2001).

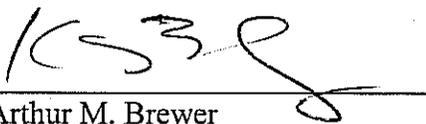
The General Counsel's arguments are insufficient to support overruling that precedent. The Board's most recent affirmation of that precedent was just two months ago. The General Counsel cites no new law or rule that has been passed since then. There has been no landmark case. There is nothing in this particular set of facts to materially distinguish this case from others that came before it. It is true that Board Members Liebman and Walsh "[did] not foreclose future consideration of the request [to award compounding interest]." *Accurate Tool & Manufacturing, Inc.*, 335 NLRB at fn. 1. However, we submit that the Board has no grounds to overturn its precedent where nothing has materially changed in the past two months since it last affirmed that precedent.

III. CONCLUSION

For the aforementioned reasons, we ask the Board to reject the General Counsel's arguments and to continue acting consistently with its precedent of awarding simple interest.

July 31, 2009

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of Respondent's Answer to the Counsel for the General Counsel's Limited Cross-Exceptions to the Administrative Law Judge's Decision and Recommended Order was served this 31st day of July, 2009, by electronic mail and First Class mail, postage prepaid upon:

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