

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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UNITED BROTHERHOOD OF CARPENTERS )  
LOCAL 43 and NEW ENGLAND REGIONAL )  
COUNCIL OF CARPENTERS )  
(McDowell Building & Foundation, Inc) ) Case No. 34-CB-3047  
)  
And )  
)  
KEVIN LEBOVITZ, an individual )  

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**EXCEPTIONS OF RESPONDENTS NEW ENGLAND REGIONAL  
COUNCIL OF CARPENTERS AND CARPENTERS LOCAL 43  
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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Pursuant to the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. 102.46, Respondents New England Regional Council of Carpenters and Carpenters Local 43 respectfully submit the following exceptions to the decision of the Administrative Law Judge:

1. Exception is made to the ALJ's determination that the steward training syllabus "was prepared at the same time" Local 43 enforced the mobility clause with respect to Mr. Lebovitz. (Decision at 5-6). The Board is directed to page 25 of the accompanying brief for support for this exception.

2. Exception is made to the ALJ's findings that the individual from western Massachusetts "got in touch with Local 108," and "satisfied their requirements." (Decision at 6). The Board is directed to pages 16-17 of the accompanying brief for support for this exception.

3. Exception is made to the ALJ's finding that "the requirements of Local 108 would obviously require the person to join the Union and become current on dues payments." (Decision at 6). The Board is directed to pages 16-17 of the accompanying brief for support for this exception.

4. Exception is made to the ALJ's statement that Mr. Kendzierski testified about only one incident where Local 43 had enforced the mobility provision against his company. (Decision at 6). The Board is directed to pages 25-26 of the accompanying brief for support for this exception.

5. Exception is made to the ALJ's statement that Mr. Fitch testified about "2 or 3" prior instances where Local 43 had enforced the mobility clause against his company. (Decision at 6). The Board is directed to pages 25-26 of the accompanying brief for support for this exception.

6. Exception is made to the ALJ's recitation of the stipulation that in the summer of "2005" there was full employment in Local 43. (Decision at 6-7). The Board is directed to page 210 of the transcript, which reflects that the stipulation concerned the summer of 2007.

7. Exception is made to the ALJ's characterization that Mr. Lebovitz', in his letter to the Union's national office, simply "complained about the mobility rule." (Decision at 11). The Board is directed to pages 23-24 of the accompanying brief for support for this exception.

8. Exception is made to the ALJ's characterization of the Mr. Lebovitz' testimony that "Kelly Harris was a Local 24 member who worked for Manafort in Local 43's jurisdiction." (Decision at 11). The Board is directed to page 29 of the accompanying brief for support for this exception.

9. Exception is made to the ALJ's determination that "the mobility clause requires union membership in order for a carpenter to work in Local 43's geographic jurisdiction." (Decision at 12). The Board is directed to pages 8-13 of the accompanying brief for support for this exception.

10. Exception is made to the ALJ's determination that the mobility clause discriminates against employees based on their "failure to be current in dues obligations in another bargaining unit." (Decision at 12). The Board is directed to pages 14-15 of the accompanying brief for support for this exception.

11. Exception is made to the ALJ's determination that the clause "forbids employers from hiring workers who are not members on good standing of their home locals." (Decision at 13). The Board is directed to pages 15-17 of the accompanying brief for support for this exception.

12. Exception is made to the ALJ's determination that the clause "makes dues payments -- for dues incurred outside the bargaining unit -- a condition of employment." (Decision at 13). The Board is directed to pages 14-15 of the accompanying brief for support for this exception.

13. Exception is made to the ALJ's determination that the clause makes a distinction between "members of respondent Council and all other applicants." (Decision at 13). The Board is directed to pages 15-17 of the accompanying brief for support for this exception.

14. Exception is made to the ALJ's determination that "the parties apparently interpret the clause as a restriction only on travelers." (Decision at 13). The Board is directed to pages 15-17 of the accompanying brief for support for this exception.

15. Exception is made to the ALJ's determination that the "only restrictions on hiring" in the parties' collective bargaining agreement are "that the Union must be given an equal opportunity to refer workers for a position and the mobility clause must be satisfied." (Decision at 13). The Board is directed to pages 8-11 of the accompanying brief for support for this exception.

16. Exception is made to the ALJ's determination that "the mobility clause on its face restricts only hiring members of the New England Regional Council." (Decision at 13). The Board is directed to pages 8-17 of the accompanying brief for support for this exception.

17. Exception is made to the ALJ's determination that "Local did not produce any evidence that the clause had been applied to exclude nonmembers." (Decision at 13). The Board is directed to pages 15-17 of the accompanying brief for support for this exception.

18. Exception is made to the ALJ's determination that the clause "gives preference to members of the local in whose jurisdiction the work will be performed over travelers."

(Decision at 14). The Board is directed to pages 15-17 of the accompanying brief for support for this exception.

19. Exception is made to the ALJ's determination that "non-union members also receive a preference over travelers because employers can hire any worker without restriction."

(Decision at 14). The Board is directed to pages 15-17 of the accompanying brief for support for this exception.

20. Exception is made to the ALJ's determination that the clause "discriminates against travelers." (Decision at 14). The Board is directed to pages 15-17 of the accompanying brief for support for this exception.

21. Exception is made to the ALJ's determination that Local 43's efforts to enforce the clause against Mr. Lebovitz and request to him that he comply with the clause on his own constituted discrimination against or coercion of travelers. (Decision at 14-15). The Board is directed to pages 15-17 of the accompanying brief for support for this exception.

22. Exception is made to the ALJ's determination that Local 43's efforts to enforce the clause with respect to Mr. Lebovitz were motivated by animus. (Decision at 16-17). The Board is directed to pages 21-22 of the accompanying brief for support for this exception.

23. Exception is made to the ALJ's determination that there was testimony "that fellow union carpenters violated the mobility rule and escaped discipline." (Decision at 16). The Board is directed to page 29 of the accompanying brief for support for this exception.

24. Exception is made the ALJ's determination that "Respondent has not historically enforced the mobility rule in a consistent manner." (Decision at 16). The Board is directed to page 29 of the accompanying brief for support for this exception.

25. Exception is made to the ALJ's drawing a negative inference from the lack of documentation of the enforcement of the mobility clause. (Decision at 16). The Board is directed to pages 27-28 of the accompanying brief for support for this exception.

26. Exception is made to the ALJ's determination that a Local 43 steward filed internal union charges against several individuals "ostensibly for non-compliance with the mobility rule." (Decision at 17). The Board is directed to pages 28-29 of the accompanying brief for support for this exception.

27. Exception is made to the ALJ's drawing a negative inference from the fact that Local 43 exercised some degree of discretion in the enforcement of the provision, and from the varying degrees of enforcement among the three Connecticut Locals. (Decision at 17). The Board is directed to pages 30-31 of the accompanying brief for support for this exception.

28. Exception is made to the ALJ's conclusion that the clause restricts employment based on union membership and facially violates Section 8(b)(1) of the Act. (Decision at 18). The Board is directed to pages 8-17 of the accompanying brief for support for this exception.

29. Exception is made to the ALJ's conclusion that Local 43's attempt to enforce the mobility clause with respect to Mr. Lebovitz violated Section 8(b)(2) of the Act. (Decision at 18). The Board is directed to pages 17-21 of the accompanying brief for support for this exception.

30. Exception is made to the ALJ's conclusion that Local 43 violated Section 8(b)(1) of the Act because it coerced Lebovitz to leave his job. (Decision at 18). The Board is directed to pages 17-21 of the accompanying brief for support for this exception.

31. Exception is made to the ALJ's conclusion that Local 43 violated Section 8(b)(1) and (2) by discriminatorily enforcing the mobility clause against Lebovitz in retaliation for his

previous concerted activity. (Decision at 18). The Board is directed to pages 21-31 of the accompanying brief for support for this exception.

32. Exception is made to the ALJ's recommended remedies of a cease and desist order, a make whole remedy, and a direction to "revise" the term in the parties' collective bargaining agreement. (Decision at 18-20). The Board is directed to page 32 of the accompanying brief for support for this exception.

Date: August 13, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christopher N. Souris, hereby certify that I caused a copy of the foregoing to be served this 13<sup>th</sup> day of August, 2009 by email Regional Director Jonathan Kreisberg and Attorney Thomas E. Quigley, NLRB Region 34, 280 Trumbull Street, Hartford CT 06103 and by overnight mail to Kevin Lebovitz (for whom no email address has been provided), 31 Willow Street, Mystic, CT 06355.

/s/ Christopher N. Souris