UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STEPHENS MEDIA, LLC d/b/a	)		
HAWAII TRIBUNE-HERALD	)		
	)		
Employer,	)	**CASE NOS.**	**37-CA-7043**
	)		**37-CA-7045**
	)		**37-CA-7046**
	)		**37-CA-7047**
AND	)		**37-CA-7048**
	)		**37-CA-7084**
	)		**37-CA-7085**
HAWAII NEWSPAPER GUILD,	)		**37-CA-7086**
LOCAL 39117,	)		**37-CA-7087**
COMMUNICATIONS WORKERS OF AMERICA,	)		**37-CA-7112**
AFL-CIO	)		**37-CA-7114**
	)		**37-CA-7115**
Union.	)		**37-CA-7186**
	)		

OPPOSITION OF *HAWAII TRIBUNE-HERALD* TO COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO STRIKE RESPONDENT'S REPLY BRIEF, OR IN THE ALTERNATIVE, TO STRIKE RESPONDENT'S FOOTNOTES

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I. INTRODUCTION

COMES NOW, Stephens Media LLC d/b/a Hawaii Tribune-Herald ("*HTH*") with this Reply to General Counsel's Motion to Strike the Respondent's Reply Brief or, In the Alternative, to Strike Respondent's Footnotes. Counsel for the General Counsel ("General Counsel") brought its motion pursuant to Section 102.47 of the Board's Rules and Regulations, Series 8, as amended. *HTH* finds that this is yet another dilatory move by the General Counsel to avoid the reality of a weak case and an Administrative Law Judge's Decision and Recommended Order that is not supported by substantial evidence. General Counsel's motion should be denied.

II. ARGUMENT

The General Counsel's motion lacks merit. Section 102.114(d) of the Board's Rules and Regulations states that papers "shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent), and shall be double spaced (except that quotations and footnotes may be single spaced)." The Board has failed to state what the font requirements are for footnotes. Just as the Board chose to provide additional clarification on spacing, it could have done so with regard to fonts. The Board, however, did not make any such clarification. If anything, the Board should consider going though the official rulemaking procedures to delineate what the typeface requirements are for footnotes and regular text, much like it did with regular text and footnote spacing requirements.

There has been no intent to deceive the Board. *HTH* has conformed with the requirements and submitted a proper Reply Brief. It is customary for footnotes to be a smaller font than the main text. In fact, the Board's own opinions prove this. The Board uses a 12-point font in its decisions, but uses what appears to be 8-point font in its footnotes. Similarly, the Fifth and Seventh Circuit Court of Appeals allow footnotes to be a smaller font than the main text.

See Fifth Circuit Local Rule 32.1 and Seventh Circuit Local Rule 32(b). Even Microsoft Word defaults to a smaller font for footnotes.

In any event, parties have tried unsuccessfully to raise similar claims of improper typeface in an effort to strike briefs. In *Freeman Decorating Co*., 336 NLRB 1, 2, fn. 3 (2001), motions to strike two briefs were filed because the "filings allegedly contained a smaller-than-usual font and violated the page length, footnote, and spacing limitations." The Board denied the motions as lacking merit. *Id*. This motion by the General Counsel is similarly lacking in merit. The General Counsel has failed to cite any Board case to support its plea for assistance. Presumably, if cases exist where the Board struck briefs or exceptions for improper font in a footnote, the General Counsel would have cited them. The *Freeman* case, however, supports *HTH's* position that the General Counsel's motion should be denied.

In its Answering Brief, the General Counsel attacks, on a procedural basis, the Exceptions filed by *HTH*. *HTH*'s conforming Reply Brief completely eviscerates the General Counsel's argument. *HTH* demonstrated, by way of dozens of cases cited in the footnotes, the weakness of the General Counsel's argument. These cases should not go ignored by the Board. *HTH*, in good faith, met the Board's ten-page limitation for the Reply. There was no intent on the part of *HTH* to do an end run around the rules. *HTH*, in good faith, believed that the font for footnotes could be smaller than the font for the rest of the text. This is not a case where a brief has been filed with substantially exceeds the Board's limitations. The General Counsel's Motion to Strike should be denied. Justice requires that the Board consider the cases decided by *HTH*. The motion should be denied.

III. CONCLUSION

WHEREFORE, for any and all of the reasons stated above, and any additional reasons deemed appropriate, *Hawaii Tribune-Herald* respectfully requests that Counsel for the General Counsel's Motion be denied.

Dated: July 16. 2008
Nashville, Tennessee

Respectfully submitted,

THE ZINSER LAW FIRM

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing OPPOSITION OF HAWAII TRIBUNE-HERALD TO COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO STRIKE RESPONDENT'S REPLY BRIEF, OR IN THE ALTERNATIVE, TO STRIKE RESPONDENT'S FOOTNOTES was served electronically and via Federal Express on this 16th day of July 2008 on the following:

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