

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

CC-1 LIMITED PARTNERSHIP D/B/A	Cases No.
COCA COLA PUERTO RICO BOTTLERS	24-CA-11018, et al.
Respondent Employer	24-CB-2648, et al.
And OTHERS	24 CB-2706, et al.

**CCPRB'S REPLY BRIEF TO GENERAL COUNSEL'S ANSWERING BRIEF TO  
RESPONDENT EMPLOYER'S EXCEPTIONS**

COMES NOW, CC1 LIMITED PARTNERSHIP D/B/A COCA-COLA PUERTO RICO BOTTLERS, hereinafter referred to as "CCPRB", through the undersigned attorneys, and pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("Board"), files its Reply Brief to General Counsel's Answering Brief.

On July 19, 2010, CGC filed an Answering Brief to CCPRB's Exceptions where it discussed its position regarding the September 9 work stoppage, the October 20-22 strike and the "last chance" agreement.<sup>1</sup> At the outset, it is important to note that, contrary to CGC's contentions, all of CCPRB's exceptions were duly supported with record evidence and were thoroughly discussed in CCPRB's Brief in Support of Exceptions.<sup>2</sup> Within this context, and due to the length limitations for this Reply, CCPRB will address the most salient issues presented by CGC in its Answering Brief to CCPRB's Exceptions<sup>3</sup>.

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<sup>1</sup> All dates refer to the year 2008, unless otherwise noted.

<sup>2</sup> CGC also alleges that CCPRB's Exceptions 9, 15, 16, 18 and 20 do not comply with section 102.46 of the Board's Rules and Regulations because CCPRB did not argue the relevancy of said findings. CCPRB contends that its Exceptions and Brief in Support of Exceptions conform to the Board's procedural rules. In the alternative, even if the Board determines that CCPRB's exceptions do not fully comply with section 102.46, the Board should not reject them because they sufficiently state CCPRB's position and the points of disagreement with the ALJ's Decision. The Board has consistently held that it will not disregard exceptions when they are not so deficient as to warrant striking them, sufficiently state the Respondent's position, substantially conform to the Board's procedural rules or sufficiently designate the points of disagreement with the ALJ's Decision. *See: Farr Co.*, 304 NLRB 203 n.1 (1991); *Premier Products*, 303 NLRB 161 n.1 (1991); *Williams Services*, 302 NLRB 492 n.1 (1991); *Huizinga Cartage Co.*, 298 NLRB 965 n.1 (1990).

<sup>3</sup> CGC's allegations in its Answering Brief regarding Miguel Colón have already been addressed in prior filings. With respect to its allegations that the testimonies of Troche and Victor Colón were contradictory, it bears restating that the evidence, the testimonies and the findings of the ALJ, when analyzed as a whole, show that their testimonies were not contradictory.

### The Events Preceding the October 20-22 Strike

The true motivations behind the October 20-22 strike are a crucial matter in this case. In order to understand these motivations, all the events that occurred between the September 9 work stoppage and the strike must be carefully examined. Such an examination will unquestionably reveal that, contrary to the CGC's contentions, the October 20-22 strike was carefully planned and executed with the purpose of effectively replacing the Union and undermining its bargaining position.

As shown by the evidence on the record, following the September 9 work stoppage the Union held an assembly on September 15 to discuss **three** issues: (1) the return to the bargaining table to negotiate the successor CBA, (2) CCPRB's agreement not to file charges against the Union, and (3) the reinstatement of the Shop Stewards. In its Decision, the ALJ held that during the assembly, a majority of employees authorized a strike vote to protest only the discharge of the Shop Stewards. Inasmuch as this finding is not supported by the record, CCPRB raised an exception and argued that a strike was not authorized for that sole purpose. The record shows that the Union expressed during the assembly that a strike vote would only be approved if CCPRB did not agree to at least one of the three issues mentioned.

CGC argues in its Answering Brief that CCPRB attempts to misrepresent the purpose of the September 15 assembly. CGC also argues that its witnesses, José Adrian López, Miguel Colón and Carlos Rivera-Rodríguez, all testified that the September 15 assembly took place to resolve the suspension of the Shop Stewards. This is not supported by the record.

Contrary to CGC's contention, the testimonies of CGC's own witnesses irrefutably establish that a strike vote would only be approved if the Union was unable to resolve all of the 3 issues presented during the assembly. In this respect, Miguel Colón testified:

It was Germán Vázquez, the main—the person who was chiefly in charge of addressing that—directing that assembly and he informed everybody there present, the enrollment, of three very important items that in order for him to negotiate with the company again – **that if the company did not agree to at least one of those items**, we would go on strike, and he called for a striking vote—a vote to strike. (Tr. 248, ln 22-25; Tr. 249, ln 1-4 Miguel Colón)

José Adrian López, the Union’s former business agent, also stated:

Mr. Francisco Marrero presented a motion, which stated the following, and it was that three things had to take place in order for the situation with Coca-Cola to be solved: the return of the negotiating committee, the no filing of charges against the Union, and their return to the negotiating table; **that if these three conditions did not take place, the striking vote would be approved.** (Tr. 136, ln. 19-25 José Adrián López)

The day after the September 15 assembly, and as the ALJ correctly held, the Union sent a request for strike assistance benefits to Teamsters’ Headquarters in Washington, D.C. CCPRB raised an exception regarding this finding because the ALJ failed to find that the petition for strike assistance was done in contemplation of a stalemate in the negotiation of the economic articles of the successor CBA.<sup>4</sup> This supports CCPRB’s position about the motivations of the strike. The failure to make such a finding could be interpreted to indicate that the Union requested funds in order to strike to protest the disciplinary actions against the Shop Stewards; which is not the case.

In its Answering Brief, CGC argues that CCPRB’s reference to the negotiation of the economic articles is taken out of context. According to CGC, as of the date of the last bargaining session prior to the request, the negotiation of the economic articles had not yet started. While this may be true, CGC attempts to mislead the Board.

At the time of the request for strike funds, the parties had already bargained more than half of the articles of the new labor contract and were close to commencing the negotiations of the economic clauses. (Tr. 98, ln. 3-5, Tr. 164, ln. 1-5 José Adrián López) In fact, the Union had

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<sup>4</sup> The Teamsters Constitution requires that, prior to becoming involved in a strike, Local 901 notify the International’s Joint Council of the contemplated action, and the nature of the difficulty which leads to said action.

formally received CCPRB's proposals for three of the economic articles. (Tr. 103, ln. 3-8 José Adrián López) In addition, both Lourdes Ayala and José Adrián Lopez testified that, as of September 9, progress at the bargaining table was very slow.<sup>5</sup> Under these conditions, the Union foresaw a potential stalemate in the negotiation of the said articles and took precautions, as it clearly expressed in its petition for strike funds.

Furthermore, and as thoroughly discussed in CCPRB's Brief in Support of Exceptions, the Teamsters Constitution requires that, prior to becoming involved in a strike, the Union must notify the International's Joint Council of the contemplated action, and the reasons why it is taking said action. (R.U. Exh. 8, Art. XII, Section 4). The petition filed by the Union on September 16 specifically states that the reasons for requesting strike funds are "the economic articles" of the successor CBA. (CP 24-CB-2706 Exh. 1) It does not mention the Shop Stewards in any place or form. This omission evidences that the Union did not contemplate to strike only over the reinstatement of the Shop Stewards.

On October 3, the Union held an internal election to fill the positions of President, Vice-President and three trustee positions. (ALJD p. 15, ln. 44-45) CCPRB raised an exception in this regard because the ALJ failed to find that the slate supported by José Adrián López, the Shop Stewards, and CCPRB's employees lost that election. CGC argues in its Answering Brief that the Board should disregard this Exception because CCPRB did not argue the relevancy of such finding. CCPRB disagrees. This argument was fully discussed in CCPRB's Brief in Support of Exceptions.<sup>6</sup>

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<sup>5</sup> Lourdes Ayala testified that she was worried about the negotiation because the parts could not move forward from the temps issue. (Tr. 787, ln. 17-24). José A. López testified that several negotiating sessions had been held trying to accomplish an agreement regarding the "categories" article. (Tr. 100, ln. 23-24).

<sup>6</sup> As discussed in CCPRB's Brief in Support of Exceptions, the results of the Union's internal elections show the fissures that existed between the Union and CCPRB's unit employees. There were two slates competing in the election, one supported by Germán Vázquez, the Union's Secretary Treasurer, and the other supported by most of CCPRB's employees. At CCPRB's shop, Vázquez' slate suffered a monumental defeat, with 6 votes for his slate and 108 votes for the opposing slate. (GC. Exh. 34, par.

Just six days after internal union elections were held, the Shop Stewards, by themselves and without union approval, distributed flyers in front of CCPRB's premises calling for a meeting of unit employees. In this respect, the ALJ found that "on October 9, pursuant to requests by a number of bargaining unit employees to have another assembly, a flyer was prepared by suspended Shop Stewards and distributed to bargaining unit employees announcing a meeting for October 12, to further discuss the three points presented to the Employer". (ALJD p. 16, ln. 1-5) CCPRB raised several exceptions regarding this finding.

First, CCPRB argued that the ALJ erred by finding that the Shop Stewards summoned an assembly per the request of the employees because said finding was based on the self-serving testimony of the sole Shop Steward to testify in that regard. CGC argues in its Answering Brief that the ALJ's finding is based on the uncontroverted testimony of Miguel Colón. Notwithstanding this, CCPRB reiterates that the ALJ should not have given any credibility to Miguel Colon's statements, inasmuch as no other bargaining unit employee, and not even any of the other four Shop Stewards who were present during all the hearings, corroborated his testimony. In the alternative, even if the ALJ's findings were deemed correct, the fact that bargaining unit employees requested the Shop Stewards to conduct a meeting is evidence that they saw them, and not the Union, as their representatives. This also shows the employees' desire of acting "through the Shop Stewards" and not the Union.

In its Exceptions, CCPRB also argued that the ALJ failed to find that the meeting called by the Shop Stewards for October 12 was intentionally scheduled to conflict with an assembly called by the Union for that same date. CGC tries to convince the Board in its Answering Brief

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20) These results clearly show that CCPRB's unit employees had great differences with Union leadership, giving them ulterior motives to later strike behind their exclusive bargaining representative's back and attempt to substitute their exclusive bargaining representative.

that the fact that both the Union and the Shop Stewards summoned the employees to meetings during the same day is some kind of coincidence. However, the evidence on record proves otherwise.

During the hearing, Miguel Colón admitted that the flyers the Shop Stewards originally prepared called for an assembly to be held on October 13, not October 12. (Tr. 293, ln. 18-25; Tr. 294, ln. 1 Miguel Colón) Moreover, Colón testified that, while they were distributing the flyers on October 9,<sup>7</sup> they were told that Union representatives were inside the plant scheduling an assembly for employees. (Tr. 282, ln. 10-25; Tr. 283, ln. 1-13 Miguel Colón) Miguel Colón also admitted that the Shop Stewards changed the date of their meeting from the 13<sup>th</sup> to the 12<sup>th</sup>, the same day that they distributed the flyers (October 9).<sup>8</sup> The only logical conclusion that can be drawn from Colón's testimony is that the Shop Stewards changed the date of their meeting when they learned about the Union's assembly.<sup>9</sup>

The preceding conclusion is further supported by Shop Stewards' expressions toward Union officials. While the Shop Stewards were distributing flyers in front of CCPRB's facilities, Union representative Angel Vázquez asked the Shop Stewards not to divide membership by instigating employees not to go to the Union's assemblies. (Tr. 273, ln. 17-25; Tr. 274, ln. 1-15 Miguel Colón) Miguel Colón testified that the Shop Stewards responded that the members would have to choose which meeting to attend. (Tr. 274, ln. 15-17 Miguel Colón) These expressions are further evidence that the Shop Stewards intention, and the intention of the employees who followed them, was to act in the Union's place and effectively supplant it.

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<sup>7</sup> Due to human error, CCPRB's Exception 12 states this date as October 12, however, CCPRB's Brief in Support clarifies the correct date as October 9.

<sup>8</sup> Miguel Colón testified that the fact that the flyers called for an assembly on October 13 was due to a typo. However, the Board should give no credit to such self-serving testimony, when analyzed in conjunction with all the underlying circumstances and the Shop Stewards' expressions.

<sup>9</sup> It should be further noted that the purpose of the October 12 assembly called by the Union was to choose the Shop Stewards' replacements in the negotiating committee, while the Union negotiated their reinstatement. (Tr. 343, ln. 22-24 Alexis Hernández)

CGC also argues that CCPRB attempts to mischaracterize what transpired on October 9 to portray that Angel Vázquez' conversation with the Shop Stewards was an amicable one. CGC requests that the Board take administrative notice of a Decision of the Division of Appeals on case 24-CB-2648 to show that, on October 9, the Union made threatening remarks and engaged in acts of violence against the Shop Stewards. This request is essentially an attempt to introduce evidence after judgment. It was CGC's obligation to offer this evidence during trial, and to subject it to argument and rulings as part of its case. However, even when CGC had the opportunity to submit the evidence, it chose not to do so. Due process proscribes the consideration of said evidence at this stage of the proceedings. Administrative notice is not a talisman by which gaps in a litigant's evidentiary presentation before the ALJ may be repaired on review before the Board.<sup>10</sup>

CCPRB also made Exceptions regarding the ALJ's failure to find that two assemblies were in fact held on October 12, one called by the Union and one summoned by the five Shop Stewards; and that no Union officer was present at the Shop Stewards' meeting. (CCPRB Exc. 15-16) CGC states in its Answering Brief that the Board should disregard these Exceptions because CCPRB did not argue the relevancy of such findings. However, CGC's premise is incorrect.

As was discussed in CCPRB's Brief in Support of Exceptions, the fact that both assemblies were held the same day proves that the Shop Stewards were effectively acting in the place of the exclusive bargaining representative. That is, on one hand, the Union held an assembly to choose a new negotiating committee in order to resume negotiations of the successor

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<sup>10</sup> City of New Brunswick v. Borough of Milltown, 686 F.2d 120, 131 n.15 (3<sup>rd</sup> Cir. 1982).

CBA, while at the same time it continued to negotiate the reinstatement of the Shop Stewards.<sup>11</sup> On the other hand, employees who attended the Shop Stewards' meeting signed a pre-drafted document that informed the Union that they wanted "the solution of the collective bargaining agreement" through the Shop Stewards and requested the implementation of a strike vote. These facts are important because they show that employees were trying to force the Union to adopt the Shop Stewards' bargaining position – i.e. use the Shop Stewards as bargaining committee and strike over their reinstatement – when it had already decided that it would elect a new bargaining committee and return to the bargaining table, while it negotiated the reinstatement of the Shop Stewards.

On October 15, just three days after the assemblies, the Union formally requested that CCPRB resume negotiations of the successor CBA; to which CCPRB promptly acquiesced. (Joint Exh. 16-17) Notwithstanding the above, on October 19, the Shop Stewards and a group of employees met at Miguel Colon's house and decided to hold a strike the following day. (Tr. 421, ln. 1-12 Carlos Rivera) CCPRB made an Exception regarding the ALJ's failure to find that no member of the Union's Executive Board was present at the Shop Stewards' October 19 meeting. CGC argues that the Board should disregard this Exception because CCPRB did not state the relevancy of such finding. However, the importance of this finding can be clearly ascertained from CCPRB's Brief in Support of Exceptions. The fact that no member of the Union's Executive Board was present at a meeting for the planning and implementation of a strike shows that the Union did not support said action, and that unit employees were aware of it.

CGC also tries to convince the Board that striking employees did not know of the Union's disapproval of the strike because the Union had not replied to the petition signed by

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<sup>11</sup> Alexis Hernández testified that the purpose of the October 12 Union meeting was to choose a negotiating committee because it would take some time before the Shop Stewards could return. (Tr. 343. ln. 22-24 Alexis Hernández)

employees during the Shop Stewards' October 12 meeting. This argument is meritless. First, the fact that the Union had not replied to a petition that had been sent to the Union just 4 days earlier, by no means shows that the Union supported the strike.<sup>12</sup> Moreover, the Shop Stewards, nor any employee, tried to elicit a response from the Union in regards to their petition, before deciding to strike. Second, even before the strike commenced, it was already evident that the Union's bargaining position was not to strike. The Union had already held an assembly with employees to elect a new bargaining committee, had formally asked CCPRB to return to the negotiations of the successor agreement, and the Employer had agreed to the petition. Moreover, no Union officer was present during the Shop Stewards' October 12 meeting, or during the October 19 meeting. Under these circumstances, it is illogical to state that employees believed that they were striking in accordance with the Union's bargaining position.

Finally, CGC argues that CCPRB failed to demonstrate that the October 20-22 strike was in derogation of the Union's position or that employees attempted to bypass the Union. This is not correct. The evidence on record clearly shows that the October 20-22 strike was an illegal strike. The Board, Circuit Courts of Appeals and the Supreme Court have all recognized that, in order for the collective-bargaining system to function efficiently, **the union must retain a broad degree of discretion in the negotiation and administration of the bargaining contract.**<sup>13</sup> It is the union, not the employees, who is entitled to decide how to handle internal union affairs.<sup>14</sup> Absent a breach in the union's duty of fair representation, employees may not act individually or compel the union to act as they deem appropriate.<sup>15</sup>

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<sup>12</sup> The petition signed by employees during the Shop Stewards' October 12 meeting was faxed to the Union on October 14. (ALJD p. 16, ln. 24-25)

<sup>13</sup> Electrical Workers (IBEW) v. Foust, 442 U.S. 42, 51 (1971); United Rubber, Cork, Linoleum & Plastic Workers v. N.L.R.B., 368 F.2d 12, 16-17 (5<sup>th</sup> Cir. 1966).

<sup>14</sup> United Rubber, Cork, Linoleum & Plastic Workers v. N.L.R.B., *supra*.

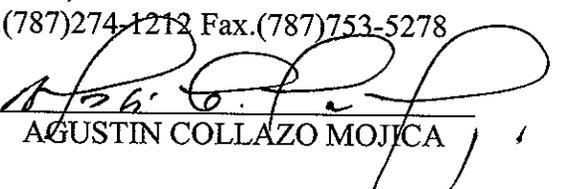
<sup>15</sup> *See: Vaca v. Sipes*, 386 U.S. 171 (1967).

In the present case the decision regarding what strategy to employ to accomplish the return to the bargaining table and the reinstatement of the strikers, rested on the broad discretion that the Act grants the Union in relation to the management of the bargaining contract and the handling of union affairs. As it has already been discussed, the Union decided to return to the bargaining table to negotiate the successor contract, while it continued negotiating the reinstatement of the Shop Stewards. However, the events preceding the strike, as well as the employees' actions during the strike<sup>16</sup>, all prove that unit employees attempted to bypass the Union, impose the Shop Stewards' position regarding the strategy on how to obtain their reinstatement and force CCPRB to negotiate with the Shop Stewards as the negotiating committee.

Furthermore, by engaging in the strike, the employees obstructed the ongoing collective bargaining process between CCPRB and the Union, as the certified exclusive bargaining representative, by delaying the negotiations of the successor bargaining agreement. The Board and Courts of Appeals have held that strikes of this kind, which are likely, **regardless of their purpose, to impair the union's performance as exclusive bargaining representative**, are not protected under the Act.<sup>17</sup>

Respectfully submitted, this 2<sup>nd</sup> day of August 2010.

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<sup>16</sup> CCPRB refers the Board to its Brief in Support of Exception where the actions of employees during the strike have been thoroughly discussed.

<sup>17</sup> East Chicago Rehabilitation Center, Inc. v. N.L.R.B., 710 F.2d 397, 402 (7<sup>th</sup> Cir. 1983), *citing* R.C. Can Co., 140 N.L.R.B. 588, 595-596 (1963); Sunbeam Lighting Company, 136 N.L.R.B. 1248, 1253-1255 (1962).

## CERTIFICATE OF SERVICE

We hereby certify that on this same date a true copy of this document was served upon the following:

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Dated at San Juan, Puerto Rico this 2<sup>nd</sup> day of August, 2010.

  
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