

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

SUPPLY TECHNOLOGIES, LLC)	Case No.: 18-CA-19587
)	
Respondent,)	
)	
vs.)	
)	
TEAMSTERS LOCAL 120)	
)	
)	
Charging Party.)	
)	

**RESPONDENT, SUPPLY TECHNOLOGIES, LLC, EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE’S DECISION**

Supply Technologies, LLC, (the “Company”), Respondent in the above-captioned matter, by its undersigned counsel and pursuant to the Rules and Regulations of the National Labor Relations Board (the “NLRB”), files the following Exceptions to the decision of Administrative Law Judge George Alemán (the “ALJ”) dated May 31, 2011 (the “ALJD”).

1. The Company excepts to the ALJ’s failure to read and interpret the Total Solutions Management program (“TSM”) Agreement to Use (“Agreement”) as a contract between Supply Technologies and its employees under the Federal Arbitration Act, 9 U.S.C. §§1-16 (the “FAA”) (ALJD at pp. 3-11- inclusive). The Agreement is a valid and enforceable contract under the FAA establishing the terms of the parties agreement to arbitrate employment disputes. (JX 2(c); Transcript at 40)¹.
2. The Company excepts to the ALJ’s legal conclusion that charges arising under the Act must be expressly excluded or exempted from and may not be arbitrated under an

¹ For purposes of citation, “transcript” will be abbreviated as “Tr.”

arbitration agreement enforceable through the FAA. (ALJD at pp. 8-11, inclusive and footnotes). This determination is contrary to the basic legal principles governing administrative remedies and decisions interpreting the FAA.

3. The Company excepts to the ALJ's legal determination that requiring a waiver of an employee's right to administrative remedies violates Section 8(a)(1) of the Act and would have a "chilling effect on employees' willingness to exercise their Section 7 right[s]." (ALJD at 8, lines 17-27). This determination is contrary to the basic legal principles governing administrative remedies and the FAA.
4. The Company excepts to the ALJ's interpretation of the TSM Agreement and the Existing Arbitration Agreement entered into by Hlee Yang, Kham Seng Lee, and Charlie Lee during their employment based on his expressed failure to understand the basic contract law and statutory principles that govern arbitration agreements. (Tr. at 130-33).
5. The Company excepts to the ALJ's legal determination that the TSM program violated Section 8(a)(1) because the Agreement, Rules and Questions & Answers documents did not contain identical information. The ALJ's determination creates a de facto requirement that an arbitration agreement must be contained in a single, integrated writing in violation of the FAA and federal court decisions. (ALJD at 8-11, inclusive).
6. The Company excepts to the ALJ's legal determination that the TSM Agreement violates that Act without concluding that it is unenforceable as a matter of Ohio contract law in violation of Section 2 of the FAA and numerous federal court decisions.
7. The Company excepts to the ALJ's factual conclusion that the Total Solutions Management program ("TSM") is "ambiguous and confusing, and thus unlawful."

(ALJD at 8, lines 14 – 15). The TSM program documents clearly and unequivocally state the parties’ rights and responsibilities and are not unlawful. (JX 2(a)-(c)).

8. The Company excepts to the ALJ’s legal conclusion that TSM violates Section 8(a)(1) of the National Labor Relations Act, 29 U.S.C. §§151-169 (the “Act”) because employees could reasonably conclude that it prohibited them from filing charges with the NLRB. (ALJD at 7, lines 40-44; 8, lines 14-15, 17-27; 9, lines 16-28, 30-41; 10, lines 1-30; 11, lines 1-6). The conclusion is contrary to the express provisions of the TSM program documents and decisions of the NLRB and federal courts concerning the interpretation of employer policies. (JX 2(a)-(c)).
9. The Company excepts to the ALJ’s factual determination that, with only limited exceptions, “all other claims employees might have, or wish to raise, against Respondents would have to be processed, heard and resolved exclusively through the TSM program.” (ALJD at 3, lines 24-32). This determination is contrary to the express provisions of the TSM program and record evidence showing that employees already contractually bound to mandatory arbitration agreements with the Company have filed administrative charges with an administrative agency without interference by the Company. (RX 8, 10, 13, 16; Tr. at 128-30, 143-44, 154-55).
10. The Company excepts to the ALJ’s factual conclusion that the Company did not explain why the contents of the Agreement, the TSM Official Rules (the “Rules”) and the Questions & Answers were not identical. (ALJD at 9, lines 43-50). The Company provided detailed descriptions of the documents and their purpose in its post hearing brief. Additionally, the issue was not raised in the Complaint or during the hearing.

11. The Company excepts to the ALJ's factual and legal determination that the Agreement's express statement that employees retain the right to file administrative charges with and cooperate with the subsequent investigation of any government agency could be interpreted as ambiguous or confusing or is contradicted by any provision in any TSM documents. (ALJD at 8, lines 7-51; 9, lines 1-52; 10, lines 1-30).
12. The Company excepts to the ALJ's determination that Supply Technologies did not meet its burden to explain its intention or the meaning of the remedy waiver provision of TSM as nothing in the Complaint alleges that the specific provision is unlawful nor did the General Counsel ("GC") specifically argue that the provision violated the Act during the hearing or in her post-hearing brief. (ALJD at 8, lines 29-34; 9, lines 1-4; GC Post-Hearing Brief).
13. The Company excepts to the ALJ's failure to address facts showing that neither Neng Moua nor Charging Party (Teamsters Local 120) alleged that the TSM program prohibited employees from filing charges with the NLRB in their initial statements to the NLRB investigators nor in the original charges filed in this matter. (RX 1,2, 3, 4, Tr. 63).
14. The Company excepts to the ALJ's failure to sustain its objection to the admission of its Statement of Position which responded to allegations that it implemented TSM in retaliation for employee participation in protected activity (charges later withdrawn or amended out of the charge) during the hearing. (GCX 6; Tr. 76-77).
15. The Company excepts to the ALJ's failure to address facts showing that representatives of Region 18 redrafted the charge in Case No. 18-CA-19587 and sent it to Charging Party for filing were never raised by Charging Party. (RX 7).

16. The Company excepts to the ALJ's factual determination that Hlee Yang, Kham Seng Lee and Charlie Lee did not understand the TSM terms because they did not understand English. (ALJD at 5, lines 46-50; 6, lines 8-12, 25-27; 9, lines 12-14; 10, lines 27-30). The record evidence shows Mr. Yang, Mr. K. Lee and Mr. C. Lee regularly communicated with the Company in English, were educated in the United States in English or had additional English training, and regularly executed employment documents written in English – including, at the outset of their employment, a mandatory arbitration agreement. (RX 8, 9, 11, 12, 14 and 15, Tr. at 128-30, 140, 143-44, 152-54).
17. The Company excepts to the ALJ's factual determination that “only about 5-6” of the approximately 17-18 Hmong speaking employees “are fluent in the English language.” (ALJD at 2, fn 3). This determination is contrary to the record evidence. (Tr. at 38).
18. The Company excepts to the ALJ's factual and legal determination that an employee could reasonably conclude that the TSM program would prevent them from filing charges with an administrative agency based upon record evidence that H. Yang, K. Lee and C. Lee filed administrative charges while bound to an a mandatory arbitration agreement with the Company and the Company took no action to prevent them from doing so. (RX 10, 13 and 16; Tr. at 130, 144-45, 155).
19. The Company excepts to the ALJ's legal determination that TSM violated Sections 8(a)(1) and (4) of the Act. (ALJD at 11, lines 1-6). The record contains no evidence that the Company implemented TSM because any of its employees, including the alleged discriminatees, engaged in protected activity of any kind. Additionally, the ALJ's finding of a Section 8(a)(4) violation is contrary to the ALJ's determination that “there is

no evidence” for concluding that TSM was implemented in response to union activity. (ALJD at 11, fn. 11).

20. The Company excepts to the ALJ’s legal determination that it threatened the alleged discriminatees with termination for failing to sign the TSM Agreement in violation of Sections 8(a)(1) and (4) of the Act. Because TSM did not violate Section 8(a)(1), requiring it as a mandatory condition of continued employment did not violated Sections 8(a)(1) and (4). (ALJD at 11, lines 2-6).
21. The Company excepts to the ALJ’s factual determination that “the Respondent, in the past, has apparently used a mandatory arbitration program at its other facilities.” (ALJD at 2, fn. 4). The finding is contrary to record evidence showing that H. Yang, K. Lee and C. Lee were bound by arbitration agreements while employed by Supply Technologies prior to the implementation of TSM. (RX 10, 13 and 16; Tr. at 130, 144-45, 155).
22. The Company excepts to the ALJ’s factual determination that Neng Moua did not understand the TSM program. (ALJD at 4, lines 44-48; 5, lines 1-32). The determination is contrary to and/or ignores the record evidence. (Tr. at 40, 43, 48, 55, 57-58, 62, 73).
23. The Company excepts to the ALJ’s legal and factual determination that Neng Moua was justified in failing to seek clarification of his questions about TSM from Human Resources. (ALJD at 5, lines 37-39). The determination is contrary to and/or ignores the record evidence. (Tr. at 48, 55-57, 72-73).
24. The Company excepts to the ALJ’s reliance on *U-Haul of California*, 347 NLRB 375 (2006) and *Bill’s Electric*, 350 NLRB 292 (2007). (ALJD at 7, lines 19-20; 10, lines 12-18; 11, 5-6). These cases are distinguishable on the facts and law.

25. The Company excepts to the ALJ's Conclusions of Law, Remedy and Order in their entirety as they are unsupported by the facts on the record and contrary to law. (ALJD at 11-14, inclusive).

26. Supply Technologies excepts to the ALJ's Remedy and Order as they are in violation of the FAA. (ALJD at 11-14, inclusive).

Per NLRB Rule 102.46(i), the Company requests permission to argue the foregoing exceptions orally before the NLRB.

Respectfully submitted,

ZASHIN & RICH CO., L.P.A.

/s/Stephen S. Zashin

Stephen S. Zashin

Patrick J. Hoban

55 Public Square, 4th Floor

Cleveland, OH 44113

Telephone: (216) 696-4441

Facsimile: (216) 696-1618

ssz@zrlaw.com and pjh@zrlaw.com

Attorneys for Respondent,

SUPPLY TECHNOLOGIES, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2011 the foregoing was filed electronically via the E-Filing system on the NLRB website. The foregoing was also served via certified U.S. Mail and email on Catherine Homolka, Counsel for the Acting General Counsel, National Labor Relations Board, Suite 790, 330 South Second Avenue, Minneapolis, Minnesota 55401, (catherine.homolka@nlrb.gov) and T. Rhys Ledger, Director of Organizing and Government Affairs, Teamsters Local 120, 9422 Ulysses Street N.E., Blaine, Minnesota 55434 (rlledger@teamsterslocal120.org).

/s/Stephen S. Zashin

Stephen S. Zashin

Attorneys for Respondent,
SUPPLY TECHNOLOGIES, LLC