UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

AMGLO KEMLITE LABORATORIES, INC.	)	
Respondent,	)	**Case No. 13-CA-65271**
and	)	
BEATTA OSSAK	)	
Charging Party.	)	

RESPONDENT AMGLO KEMLITE'S CROSS-EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

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Dated: May 16, 2012

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Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the Respondent, Amglo Kemlite Laboratories, Inc. ("Amglo" or "Respondent"), hereby files the following Respondent's Cross-Exceptions to the Administrative Law Judge's ("ALJ") Decision dated March 22, 2012.

1. The Respondent excepts to the ALJ's finding, at p. 2, n.3, that the evidentiary record lacks "any material differences between the testimony of current employees Katarzyna Dziekan and Beata Ossak and the testimony of management's witnesses." The record reflects a number of material differences in such testimony.

2. The Respondent excepts to the ALJ's finding, at p. 2, n.3, to automatically credit the testimony of Dziekan and Ossak to the extent their testimony differs from management witnesses.

3. The Respondent excepts to the ALJ's finding, at p. 3, lines 5-6, that "[Isabella] Christian responded negatively and said that [Jim] Hyland was not as 'pro-Polish' as he used to be."

4. The Respondent excepts to the ALJ's finding, at p. 3, lines 6-7, that "Czajkowska stated that Hyland would tell her and Christian to 'get rid of half of you.'"

5. The Respondent excepts to the ALJ's finding at p. 3, lines 11-12, and note 5, that Czajkowska "may" have told employees to leave the plant if they were not going to go back to work. The record reflects that Czajkowska did tell employees to leave the plant if they were not going to go back to work.

6. The Respondent excepts to the ALJ's finding, at p. 4, lines 11-12, that "Czajkowska and Christian were aware that most employees were still waiting in the plant assembly area for a response to the petition at 1:15pm and even later." There is no basis in the record to suggest that Czajkowska and Christian were aware that employees were waiting "for a response."

7. The Respondent excepts to the ALJ's finding, at p. 4, lines 13-15, that "[u]pon receiving the petition Czajkowska and Christian went first to talk to Respondent's CFO Larry Kerchenfaut and then called Respondent's owner Jim Hyland in Florida to discuss the petition." There is no basis in the record to suggest that the discussion with Hyland was related to the petition.

8. The Respondent excepts to the ALJ's finding, at p. 4, lines 26-28, that "[a] small group of employees who were on a late afternoon or evening shift worked on September 20. Their work was unaffected by the strike." There is no basis in the record to support this assertion, and in fact the record directly contradicts this assertion.

9. The Respondent excepts to the ALJ's failure to credit, at p. 4, lines 27-28, n.7 "the testimony of Respondent's witnesses Christian and Skomorowska at Tr. 309 and 370-71 that Skomorowska advised Christian on September 20, that the employees planned to continue their in plant work stoppage on Wednesday, September 21," as well as the ALJ's assertion that such testimony "is completely inconsistent with Christian's account of her conversation with 'Jesse' Kopec several hours later in which she testified she told Kopec to come back the next morning." It is obviously *not* inconsistent for Christian to urge an employee to come back and work the

following day, despite receiving word from another employee that the group planned to continue to strike. Christian obviously was urging Kopec to come back and work the following day.

10. The Respondent excepts to the ALJ's finding at p. 4, lines 27-28, n. 7 that the employees "expected a response to their written petition."

11. The Respondent excepts to the ALJ's finding, at p. 5, lines 4-5, that Czajkowska "asked the employees what they were doing at the plant" on the morning of September 21, and that Czajkowska "may have told [employees] they were fired." The record does not support either finding.

12. The Respondent excepts to the ALJ's finding, at p. 6, line 38, that after meeting with Czajkowska and Christian employees "remained in the assembly area waiting for a definitive response to this grievance." The record clearly reflects that during the meeting with Czajkowska and Christian, the employees received a definitive response to their grievance on multiple occasions.

13. The Respondent excepts to the ALJ's finding, at p. 6, line 40, that "[t]he work stoppage was completely peaceful." The record does not support such a finding.

14. The Respondent excepts to the ALJ's failure to credit, at p. 6, lines 42-43, witness testimony that "employees were afraid to return to work."

15. The Respondent excepts to the ALJ's findings, at p. 7, lines 1-6, that "[t]he work stoppage did not interfere with Respondent's production to any greater extent than a strike outside the plaint," that "the entire workforce took part in the strike," and that the "strikers did not prevent other employees from working by gathering in the assembly area."

16. The Respondent excepts to the ALJ's finding at p. 7, line 7, that on Thursday and Friday September 22 and 23, "the strikers were locked out." There is no basis in the record to support this assertion, and in fact the record directly contradicts this assertion.

17. The Respondent excepts to the ALJ's findings, at p. 7, lines 10-14, that there was no indication that any employees who worked in the assembly area desired to return to work, and that "the fact that employees remained in the assembly area until 2:45pm had no greater impact on Respondent's business than if the employees had walked out of the plant." There is no basis in the record to support these assertions.

18. The Respondent excepts to the ALJ's finding, at p. 7, lines 16-17, that "it was not until [employees] presented their petition to management that they were able to specify their demands." There is no basis in the record to support this assertion, and in fact the record directly contradicts this assertion.

19. The Respondent excepts to the ALJ's finding, at p. 7, lines 18-19, that employees "never received any response to this petition until they were locked out of the facility the next morning." There is no basis in the record to support this assertion, and in fact the record directly contradicts this assertion.

20. The Respondent excepts to the ALJ's crediting, at p. 7, lines 19-20, "the testimony of Dziekan and Ossak that at least some employees expected a response to their written petition." Crediting such testimony is patently unreasonable, in that the record reflects that the strikers' wage demands were categorically rejected numerous times prior to the written petition, and thus no reasonable employee could have believed that management would respond to their written petition.

21. The Respondent excepts to the ALJ's finding, at p. 7, lines 22-23, that employees were never told to return to work or leave the facility. There is no basis in the record to support this assertion.

22. The Respondent excepts to the ALJ's finding, at p. 7, lines 26-27 that management communications resulted in "some or all" of the employees having "hope that their grievance regarding wage increases might be addressed more satisfactorily." There is no basis in the record to support this assertion, and in fact the record directly contradicts this assertion.

23. The Respondent excepts to the ALJ's conclusion, at p. 7, lines 31-32, that the length of the in-plant work stoppage "is outweighed by the other nine factors" relevant under *Quietflex Manufacturing Co.*, 344 NLRB 1055 (2005).

24. The Respondent excepts to the ALJ's conclusion, at p. 7, lines 32-33, that "the fact that employees remained in the plant so long was due in part to the ambiguity of Respondent's responses to the employee demands." There is no basis in the record to support this assertion, and in fact the record directly contradicts this assertion.

25. The Respondent excepts to the ALJ's conclusion, at p. 7, lines 38-39, that "the in-plant work stoppage was one of the few, if only, ways of communicating their grievance to Respondent." There is no basis in the record to support this assertion, and in fact the record directly contradicts this assertion.

26. The Respondent excepts to the ALJ's finding, at p. 8, lines 3-4, that "[t]here is no indication that the work stoppage interfered with the work of the few employees who worked at the plant on September 20, after 2:45pm." There is no basis in the record to support this assertion.

27. The Respondent excepts to the ALJ's assertion, at p. 8, lines 12-13, that "[Respondent] argues that it laid off 22 of the production employees for non-discriminatory economic reasons." This is a wholly inaccurate assertion, as Respondent never at any time argued that it laid off *any* employees. To the contrary, the 22 employees were placed on a preferential recall list when they were not recalled after the conclusion of an economic strike. There is no basis at all in the record for the assertion that Amglo argued that it laid off any employee.

28. The Respondent excepts to the ALJ's assertion, at p. 8, lines 13-14 that "[t]he fact that Respondent did not discharge any employees for remaining in the assembly area until 2:45 weighs in favor of finding their conduct protected." This is an incorrect statement of the law.

29. The Respondent excepts to the ALJ's conclusion, at p. 8, lines 23-25, that "Respondent's animus is established, among other things, by its decision to lock out its employees on September 21 and the statements made by Czajkowska to striking employees." There is no basis in the record for such an assertion, and in fact the record directly contradicts this assertion. Moreover, this assertion unlawfully expands the allegations in the Complaint.

30. The Respondent excepts to the ALJ's conclusion, at p. 8, lines 29-31, that "[t]he General Counsel's initial showing of discriminatory motivation is established by the fact that Respondent did not have any plans to lay-off or terminate employees from the Bensenville plant prior to the September strike." There is no basis in the record for such an assertion, and in fact the record directly contradicts this assertion. Moreover, this assertion unlawfully expands the allegations in the Complaint.

31. The Respondent excepts to the ALJ's failure, at p. 8, line 33, n. 12, to credit the testimony of Isabella Christian showing that Amglo had discussed the potential for staffing reductions due to current and projected business volume.

32. The Respondent excepts to the ALJ's statement on p. 8, line 33-35, that Christian made an "admission" that "the timing of the lay-off was a result of the strike." Amglo never asserted at any time that it engaged in a "layoff" of any employee, and there is no basis at all in the record for any such finding.

33. The Respondent excepts to the ALJ's conclusion, at p. 8, lines 35-37, that "regardless of whether Respondent had plans to lay-off employees at a later date, the acceleration of the lay-off establishes a violation of the Act." Amglo never asserted at any time that it engaged in a "layoff" of any employee, and there is no basis at all in the record for any such finding.

34. The Respondent excepts to the ALJ's conclusion, at p. 9, lines 5-8, that "a close connection exists between the complaint allegation that the employees were terminated in retaliation for their concerted strike and the question of whether the Respondent laid them off or

accelerated a lay-off in retaliation for the strike." No employee was laid off at any time following the strike.

35. The Respondent excepts to the ALJ's conclusion, at p. 9, lines 8-9, that "Respondent's management herein admitted that it accelerated the layoff because of the strike." There is no basis in the record for such a finding, as Amglo never argued or asserted that it laid off any employee following the strike.

36. The Respondent excepts to the ALJ's conclusion, at p. 9, lines 9-10, that "Respondent also fully litigated its reasons for having a lay-off." The Complaint in this case alleged that the employees were terminated, not laid off. Furthermore, Amglo never argued at any time that any employee was laid off. Thus, there literally was no opportunity to litigate any issues related to any alleged layoff.

37. The Respondent excepts to the ALJ's conclusion, at p. 9, lines 10-11, that "*Pergament* compels a finding that Respondent unlawfully accelerated the lay-offs of 22 employees no later than September 30, 2011." Amglo never argued at any time that any employee was laid off, and there is no basis in the record for such an assertion.

38. The Respondent excepts to the ALJ's conclusion, at p. 9, lines 20-21, that "Respondent has admitted that the timing of the lay-off is related to the strike." Amglo never argued at any time that any employee was laid off, and there is no basis in the record for such an assertion.

39. The Respondent excepts to the ALJ's failure to credit, at p. 9, lines 23-24, management testimony "that there were discussions about lay-offs or an intention to lay-off employees at Bensenville prior to the strike."

40. The Respondent excepts to the ALJ's finding at p. 9, line 25, that "Respondent presented no evidence to support [the] contention [that it had plans to lay off employees prior to the strike] other than self-serving testimony."

41. The respondent excepts to the ALJ's finding as p. 9, lines 30-31, that Amglo's exhibits do not support Hyland's testimony regarding the future of the Bensenville facility.

42. The Respondent excepts to the ALJ's conclusion, at p. 9, lines 34-35, that "the revenue figures for September [2011] are not indicative of anything relevant to this case."

43. The Respondent excepts to the ALJ's conclusion, at p. 9, lines 39-40, that "there are statistics that belie Respondent's claim that it laid off 22 employees for nondiscriminatory reasons." There is no basis in the record for this finding, and Amglo never claimed that it laid off any employees.

44. The Respondent excepts to the ALJ's conclusion, at p. 10, lines 3-5, that "Respondent increased the production workforce from 85 to 94 between December 2010 and August 2011, a fact which is also inconsistent with the bleak picture painted by Hyland."

45. The Respondent excepts to the ALJ's conclusion, at p. 10, lines 5-7, that "[t]here is no credible nondiscriminatory explanation as to why the future of the Bensenville plant suddenly became so dim after the strike."

46. The Respondent excepts to the ALJ's statement at p. 10, n. 13, that Amglo "failed to draw a convincing relationship between the number of lamps shipped and its need for production employees." Obviously, the number of lamps shipped by a business that makes lamps bears a close relationship to the number of production employees needed. Moreover, because the ALJ created a new theory of the case that was not alleged in the Complaint, Amglo did not have an adequate opportunity to litigate this issue.

47. The Respondent excepts to the ALJ's conclusion, at p. 10, lines 9-13, that because the number of employees at Amglo's Mexico facility was not established with certainty at the hearing, "Respondent has not established that it did not transfer a significant amount of production work to Juarez and/or other facilities in retaliation for the strike at Bensenville."

There is no basis in the record for this conclusion, and in fact this conclusion is directly contradicted by the record evidence.

48. The Respondent excepts to the ALJ's finding at p. 10, lines 13-15, that Czajkowska's statement regarding accelerating a transfer of work because of the strike is indicative of anything other than the fact that Amglo temporarily transferred work to Mexico during the strike.

49. The Respondent excepts to the ALJ's finding at p. 10, lines 20-22, that based on the absence of statistics regarding other Amglo facilities, he was "not persuaded" that there was very little work permanently transferred to Mexico because of the strike.

50. The Respondent excepts to the ALJ's conclusion, at p. 10, lines 25-26, that "[t]here is no credible evidence linking these [legitimate business] concerns to the timing of the lay-off of the 22 employees." There is no basis in the record for this assertion, and it is directly contradicted by the record evidence. Moreover, Amglo never argued that it laid off any employees.

51. The Respondent excepts to the ALJ's conclusion, at p. 10, lines 29-32, that "Respondent's decision not to recall certain employees also strongly suggests discriminatory motive." There was no allegation in the Complaint regarding the decisions to recall certain employees, and therefore Amglo did not have the opportunity to adequately litigate this issue. Moreover, the record evidence directly contradicts such an assertion.

52. The Respondent excepts to the ALJ's finding at p. 10, lines 32-34, that the Company "recalled" the most junior maintenance man. The individual in question was not "recalled" – he returned to work voluntarily during the strike.

53. The Respondent excepts to the ALJ's conclusion, at p. 11, line 2, n. 14, that senior maintenance employee, Jesse Kopec, is not a supervisory employee within the meaning of Section 2(11) of the National Labor Relations Act.

54. The Respondent excepts to the ALJ's failure to address the U.S. Supreme Court's decision in *Textile Workers Union v. Darlington Manufacturing Co.*, 380 U.S. 263 (1965) and its limitation on the application of Section 8(a)(1) to certain business decisions, including the work transfer allegation at issue.

55. The Respondent excepts to all of the remedies, at pp. 11-12, lines 22-28 and lines 1-17, which the ALJ has recommended.

56. The Respondent excepts to the appropriateness, at pp. 12-13, lines 21-42 and lines 1-28, of the recommended order in its entirety.

57. The Respondent excepts to the ALJ's admission of General Counsel's Exhibit 8, addressed on pages 330-336 of the hearing transcript, on the basis that there is no adequate foundation for this document or its relevance, and Respondent excepts to any and all findings, conclusions or recommendations by the ALJ that reflect or rely upon General Counsel's Exhibit 8.

Respectfully submitted,

/s/ Ross H. Friedman
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Dated: May 16, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the RESPONDENT AMGLO KEMLITE'S CROSS-EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION have been served upon the following persons this 16th day of May 2012:

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