UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
COUPLED PRODUCTS, LLC,	)	
	)	
Respondent,	)	**Case No. 25-CA-031883**
and	)	**25-CA-062263**
	)	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW,	)	
	)	
Charging Party.	)	

REPLY BRIEF IN SUPPORT OF UNION'S EXCEPTIONS

The Company takes issue with a series of inferences and legal conclusions made by the Union and tries to cast them as misstatements of the record. All are supported by the record. In fact, many of the facts relied on by the Union are undisputed. The Company's attempt to cast doubt on the Union's contentions should be disregarded. The Union's Brief in Support of Exceptions properly relies on facts in the record and reaches legal conclusions supported by Board precedent. The Board should accordingly adopt the Union's position and reverse the dismissal of the case.

I. The Company's Information About Local Wages Was Not Helpful To The Union

The entire question in this case is whether the Company's statements in bargaining triggered an obligation to provide more information to the Union. The Union has consistently maintained from the bargaining table through the briefing in this procedure that the Company's provisions of local wage information was not helpful to the Union to evaluate the Company's claims about

competitiveness.

Rather than "a flagrant misstatement of the record" or a "statement [that] evidences a disturbing trend of the Union fabricating statements within its exceptions filings," this is a succinct statement of the Union's *entire position* in this proceeding. The Company was obligated to divulge financial information to backstop its claims at the bargaining table. Merely parroting the term competitive did not relieve the Company of its obligation to do so. The information the Company provided was not helpful for the Union to understand the Company's contentions at the bargaining table. The Company does not dispute the Union's contention that "[n]one of the documents McMillin examined or left behind shed light on the loss of customers or the wages paid to employees similarly situated to the members of UAW Local 2049 who were working at actual competitors." [Un. Ex. Br. at 18.]

As the Union pointed out in its opening brief, the Company has employed shifting definitions of "competitiveness" throughout the bargaining process and the proceedings in this case. The Company argues in its answering brief (and this is a position it developed at the hearing) that by competitive, it meant only that its wages were not competitive with local unskilled laborers. But, as the Union argued in its Brief in Support of Exceptions, the Company used the term competitive to indicate its need to make money and keep customers and that it particularly tied its competitiveness to the future of the Columbia City Plant. [Un. Ex. Br. at 15-16.] And, indeed the Company acknowledges in its brief the undisputed fact that it repeatedly declared that the future of its facility in Columbia City was in jeopardy. [Co. Ans. Br. at 20-21.]

Perhaps the Company misunderstands the Union's position. It is therefore important to reemphasize that the entire distinction between the term "we're not competitive" and "we have an

inability to pay" is based on the magic words approach that, for reasons discussed at length in the Union's opening brief, has been rejected by the Board. The question is whether in this context, with these facts, the Company's claim triggered an obligation to divulge financial records. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 153-54 (1956). For the reasons stated in the Union's opening brief, the Company was obligated to divulge its finances to the Union.

II. The Union's Brief did not Misstate The Record

Sprinkled through the Company's brief are dark hints that the Union has misstated the record. The loudest protest, discussed above, was a complaint that the Union's contention that its position has been consistent that the Company's information about local employers is not relevant to its claim of competitiveness. As discussed above, the question in this case is not whether the information provided by the Company was sufficient to backstop its assertions about local prevailing wage rates, but whether the Company's contentions about its finances were sufficient to trigger an obligation to provide financial information to the Union. Similarly, the "misstatements" the Company identifies throughout its brief are simply attacks on inferences and legal conclusions the Union asks the Board to draw.

A. The Union's Request for an Audit was a Request for More Detail of the Company's Finances

Citing to page 26 of the Union's Brief, the Company accuses the Union of "misstating the record" by stating that " when the union requested more detail, the Company refused." [Co. Ans. Br. at 36.] The Union specifically identified its basis for this contention in footnote 2 on p.26 of the Union's brief. "The evidence shows that the Union[] requested an audit *after* the initial company provision of financial information, in order to understand the information they were given." The

Union then cited to Ginny McMillin's description of the rationale for seeking an audit of the Company's books and the Union's written demand to the Company for such an audit. [GCX 39; GCX 40.]

It is undisputed that the Union requested an audit after the initial company provision of financial information. The Company's position is that the Union was not entitled to such an audit. Far from a misstatement of the record, it is a reasonable, even probable inference (and one the Union specifically laid out in its exceptions 26 and 36) that the request for an audit was done, at least in part, to verify the information the Company provided at the table because the Union did not trust the numbers provided by the Company. The Company states that the evidence does not "demonstrate that the Union sought more detailed information about how the line items were calculated. They merely demonstrate the Union's continued demand for an audit." [Co. Br. at 37.] It should be clear that an audit would reveal "more detailed information about how the line items were calculated."

B. Evidence in the Record, Cited by the Union in its Opening Brief, Supports the Contention that the Union Requested Information about the Company's Competitors.

Coupled Products alleges that "**Nothing** in the record suggests that the Union has ever requested information about the Company's competitors." [Co. Ans. Br. at 38.] But the Company's HR Representative, RoseAnn Rubrake's notes indicate that a detailed discussion was held about work that Coupled Products was losing. (This conversation was covered in detail in the Union's Brief on page 8 of the Statement of Facts). Rubrake's notes confirm that Ginny McMillin specifically asked "[How] do you know your not competitive." Johnson responded "why else would they leave, they say they can go elsewhere and [get] product cheaper." McMillin responded: "because of cost? Is [that] why you are losing business? Who all have you lost?" Tina responded:

"I will have to get with Jonathan Drew on who we have lost." [RX 9, Notes of May 20, pp. 4-5.] The notes of Beverly Kohne, Union Recording Secretary, which the ALJ explicitly credited [ALJD at p.6, n. 8], confirm that a conversation about lost customers occurred on this date and that in this context "Ginny ask the name of company." [GCX 31, p. 14.]

According to the notes Stefanie Jones, another management representative, which cover the same day, the Company listed the specific loss of Brazing Concepts, Freightliner, and Navistar. [RX 8, p. 7.] "Brazing told J. Straub they can get rust inhibitor added + still get parts cheaper." [*Id.*] Jones reports that "Rose to provide company comparisons. Regardless of comparisons, in order to be competitive for <u>our</u> business, this is required." [*Id.*]

It is clear from the notes cited above that the Company understood the Union to be asking for information about the Company's competitors. All the notes show that a conversation took place where McMillin asked about the costs of competitors' labor and what business the Company was losing. Jones's notes in particular reveal that Rubrake was instructed to provide information about competitors after Johnson referred to a customer that specifically mentioned a cost advantage at a competitor. Instead of exploring who the companies were that were taking work from Coupled Products, Rubrake provided a list of the wages of other unskilled laborers in the area. This is undisputed. The notes of the Company's own officials show that the Company's definition of competitive at the bargaining table shifted from a reference to the labor costs of competing businesses to a reference to the wages of other supposedly competitive laborers in the area.

C. The Union did not misstate the Contents of Johnson's June 17 letter.

The Company differs with the Union's interpretation of Johnson's June 17 communications to the Union, which is captured in Respondent's exhibits 6 and 7. Merely adopting a different

position on the legal effect of the letter is not a "blatant misstatement of the record." The Union stands by its contention that Johnson's communications to the Union on June 17 do not clarify what the Company's position was other than to parrot the term "competitive." The Union contends, as it has throughout the case, that merely using the term "competitive" repeatedly does not relieve an employer from providing relevant information in response to a Union request. Johnson's June 17 communications merely beg the question: "What did the Company mean by the term competitive?"

III. The Union Members' Position before the Indiana Department of Workforce of Development is Irrelevant

Indiana law does not distinguish between workers on an unfair labor practice strike and workers on an economic strike. (And, in fact, Indiana law forbids the introduction of findings of fact from its Department of Workforce Development ("DWD") proceedings into other proceedings, *see* Ind. Code § 22-4-17-12(h).) The sole inquiry before the DWD in the case of the striking workers was whether workers involved in the dispute were "permanently replaced." The Company has consistently maintained since the beginning of the strike that the workers have been permanently replaced, and does not deny it here. The Union has argued, consistently with the Acting General Counsel's position in this case, that the decision to replace the workers permanently was illegal. If the Board finds merit in the Union's position, striking members will arguably have a duty to compensate the DWD out of any backpay award they receive.

But, nowhere in Indiana or Board law is the premise found that strikers who were illegally replaced must not apply for unemployment benefits during the potentially lengthy period their case is being litigated. In fact, Indiana has a mechanism by which workers made whole by the NLRB are required to repay their benefits. *See Smith v. Review Board*, 428 N.E.2d 88, 89 (Ind. Ct. App. 1981)

(discussing relevant provisions of Indiana law). What the Company has identified is only a deductible income issue that routinely arises in illegal discharge cases, including cases involving reinstated workers by the NLRB.

Finally, Board precedent makes clear that factual findings in front of state agencies have no collateral effect when the issues determined by the state agencies are separate. *See New CF&I Inc.*, 2000 NLRB LEXIS 316 (N.L.R.B. May 17, 2000) (citing *Trayco of S.C.*, 297 NLRB 630 (1990); *H. M. Patterson & Son, Inc..*, 244 N.L.R.B. 489, 490 n.2 (1979)). The question under Indiana law is whether the employees have "been terminated, with the employer involved in the labor dispute." *See* Ind. Code 22-4-15-3(b). Indiana courts have interpreted an employer's permanent replacement of striking employees to constitute such a termination. *See Allen v. Review Bd. of Indiana Employment Sec. Div.*, 494 N.E.2d 978, 980 (Ind. Ct. App. 1986) (*citing Jackson v. Review Board of the Indiana Employment Security Division* 215 N.E.2d 355 (1966) ("[W]here permanent replacements had been hired to supplant striking employees, the employment relationship between the strikers and the company was sufficiently severed so as to render the labor dispute disqualification rule inapplicable.")). Whether or not this termination was illegal does not factor into the analysis for the Indiana Department of Workforce Development.

In these proceedings, the Company claims to have permanently replaced its workers. [GCX 24.] This was an unfair labor practice and therefore illegal, under the National Labor Relations Act, for reasons stated in the Union's Brief in Support of Exceptions. Nothing in the individual employees' position before the Department of Workforce Development represents a concession that there was no unfair labor practice. Accordingly, the evidence is irrelevant to the proceedings.

IV. The Union Objects to the Inclusion of Footnote 30 in the Company's Answering Brief to the General Counsel's Exceptions

Hidden in footnote 30 of the Company's Answering Brief to the Acting General Counsel's Exceptions (but remarkably absent from its Answering Brief to the Union's Exceptions), is a misleading characterization of settlement negotiations that occurred between the Company and the Union after the Complaint had issued in this case. Those negotiations are confidential, inadmissible as evidence, and not part of the record in the case. They also inaccurately describe the Union's settlement position.

The Union would be on safe ground characterizing the inclusion of footnote 30 in the Company's Brief as improper, possibly even ***blatantly*** improper. But, with respect, the Union asks the Board to refrain from considering the footnote as it is not evidence in the case and not in the record of these proceedings.

V. Conclusion

The decision of the ALJ departed from governing precedent and improperly imposed a magic words requirement on the duty to divulge information component of the duty to bargain, for the reasons stated in the Union's Brief in Support of Exceptions. The Company's attempts to cast aspersions on the Union's Brief does not change that fact. Accordingly, the dismissal of the case should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the Charging Party's Exceptions and Brief in Support of Exceptions has been served on the following parties via e-mail this 15th Day of August, 2012:

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