

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

|                                   |   |                        |
|-----------------------------------|---|------------------------|
| CATERPILLAR INC.                  | ) |                        |
|                                   | ) |                        |
| Respondent,                       | ) |                        |
|                                   | ) |                        |
| and                               | ) |                        |
|                                   | ) |                        |
| UNITED STEEL, PAPER AND FORESTRY, | ) | Case No. 30-CA-064314  |
| RUBBER, MANUFACTURING, ENERGY,    | ) |                        |
| ALLIED INDUSTRIAL AND SERVICE     | ) | Hon. Robert A. Ringler |
| WORKERS INTERNATIONAL UNION,      | ) |                        |
| AFL-CIO/CLC,                      | ) |                        |
|                                   | ) |                        |
| Charging Party.                   | ) |                        |

**CATERPILLAR INC.’S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

Respondent, CATERPILLAR INC., (“Caterpillar” or “the Company”), pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. § 102.46, submits the following exceptions to the recommended decision and order of Administrative Law Judge Robert A. Ringler.

1. To the failure to find that, beginning almost immediately after the accident and continuing throughout the afternoon and into the evening of September 8, representatives from Caterpillar, the USW, OSHA, and local law enforcement participated in a multi-faceted investigation of the accident, because such findings are supported by the record evidence. Tr. 54-58, 120-21, 158-63, 309-311, 314-15, 373-74, 383.

2. To the failure to find that OSHA inspector Luis Ramos-Morales and local law enforcement officers conducted independent investigations, which included interviews of employees who were in the weld shop area at the time of the accident and witnessed some or all

of the events, and which were attended by USW representatives, because such findings are supported by the record evidence. Tr. 54-57, 120-21, 159, 373.

3. To the failure to find that Local 1343 officers, including President Kevin Jaskie, Vice President Mike Dobrzynski, grievance committeeman John Dwyer, and weld shop grievance committeeman Dave Uebele, all were on-site at the accident scene throughout the afternoon and actively assisted or participated in the investigations, because such findings are supported by the record evidence. Tr. 54-58, 157-59, 310.

4. To the failure to find that at approximately 7:00 p.m. on September 8, a reenactment of certain of the crawler-turning movements that had precipitated the accident was staged, because such findings are supported by the record evidence. Tr. 161-62, 171-73, 330.

5. To the failure to find that at OSHA inspector Ramos-Morales' direction, Union Committeeman Uebele operated the crane that was involved in the accident to lift and reposition the crawler frame that was involved in the accident, because such findings are supported by the record evidence. Tr. 160-62, 171-73.

6. To the failure to receive into evidence the parties' April 6, 2012 joint stipulation, because the ALJ conceded such evidence was directly related to the issues in this case. ALJD, p. 5, n. 13.

7. To the failure to find that after the reenactment, the OSHA investigator concluded his investigation and released the factory to resume normal operations, because such findings are supported by the record evidence. Tr. 314-15.

8. To the failure to find that during the weeks following September 8, 2011, Caterpillar continued to cooperate with OSHA's investigation of the accident, took steps to evaluate the crawler turning procedure at issue, and apprised and involved Local Union

representatives in all facets of these events, because such findings are supported by the record evidence. Tr. 79-82, 163-64, 177-78, 222-23, 341-43, 345, 383, 385-92; GC Ex. 5.

9. To the failure to find that a few days after the accident, Company safety manager Colleen Klaiber, together with members of her safety committee and the facility's crane committee, staged another reenactment of the crawler turning operation in which Bill Frahman, a member of the USW Local 1343 bargaining unit, operated the crane, because such findings are supported by the record evidence. Tr. 163-64, 177, 309, 388.

10. To the failure to find that the Company put together a committee to evaluate the "standard work" protocols for turning the crawler frame and seek consensus on an optimal process for turning the crawler frame, which included management representatives and bargaining unit operators Frahman and Dave Klein, because such findings are supported by the record evidence. Tr. 385, 388-90; GC Ex. 34.

11. To the failure to find that on September 16, 2011, the facility implemented a revised set of standard work protocols to govern the procedure of rotating a crawler frame and that the specific individuals who signed off on the new protocols included bargaining unit employee and operator Frahman, and several management employees, because such findings are supported by the record evidence. Tr. 341-42, 345, 389; GC Exs. 25, 34.

12. To the failure to find that on November 29, 2011, the committee completed a second set of revised standard work protocols for rotating crawler frames and that color copies of the revised standard work protocols were posted in the facility at all work stations where the crawler frame rotation process is performed, because such findings are supported by the record evidence. Tr. 343; GC Ex. 25.

13. To the failure to find that following the revision of the standard work protocols, Caterpillar also continued to cooperate with OSHA's continuing investigation and continued to involve Local Union representatives in these ongoing meetings, because such findings are supported by the record evidence. Tr. 79-82, 379-81; GC Ex. 35.

14. To the finding that Union official Jaskie "relayed Local 1343's plan to have [Sharon Thompson] conduct an onsite investigation to Regional Manager Rod Bolhaus, who pledged Caterpillar's full cooperation (ALJD, p. 3, lines 13-15), because that finding is contrary to the record evidence. Tr. 311-13, 58, 70, 123, 317.

15. To the failure to find that when Jaskie and Bolhaus first discussed the possibility of an International representative visiting the facility, Jaskie did not identify the purpose for the proposed visit, the name of any specific individual that might be coming, or the proposed date of the visit, because such findings are supported by the record evidence. Tr. 57-58, 310-14.

16. To the failure to find that within an hour of this discussion, Bolhaus talked to Jaskie and Dobrzynski about an International representative visiting the facility and told them that he had "reconsidered that position and said that that was a conversation that needed to take place between the national office [of the USW] and Caterpillar's legal department to gain access to the property," because such findings are supported by the record evidence. Tr. 312-13, 58, 70, 123, 317.

17. To the failure to find that USW International representative Sharon Thompson was given access to the South Milwaukee facility by Local Union officials and arrived unannounced at the facility, because such findings are supported by the record evidence. Tr. 59, 68-71, 213-15, 316-17.

18. To the failure to find that after she left the facility, Thompson did not attempt to conduct any interviews of employees, speak with the OSHA investigators or law enforcement officers who were investigating the accident, or meet with anyone in the Local Union leadership for the purpose of discovering how the part-turning operation worked, because such findings are supported by the record evidence. Tr. 215-17, 232-36.

19. To the failure to find that the Union filed an unfair labor practice charge on Monday, September 12, without awaiting a response to the request for access they made on Friday, September 9, 2012, because such findings are supported by the record evidence. Tr, 214-15; GC Exs. 2(a) and 2(b).

20. To the failure to find that on Friday, September 9, 2012, the Union requested access to the South Milwaukee in order to conduct a “joint investigation,” because such findings are supported by the record evidence. GC Ex. 3.

21. To the finding that selectively quotes and highlights Caterpillar’s September 16 letter to the Union regarding its request for access to conduct a joint investigation, ALJD, pp. 3-4, lines 31-38; lines 1-4, because those findings are not supported by the record evidence. GC Ex. 3.

22. To the failure to find that Caterpillar’s September 16 letter to the Union additionally stated that the Company had reviewed the Union’s citation to certain NLRB precedent and concluded that it did not support the Union’s request for access to conduct a joint investigation, because: (1) OSHA and law enforcement had already conducted on-site investigations of the accident and local union officials were present and participated in those investigations; (2) Caterpillar was continuing its cooperation with OSHA’s investigation and would continue to share information with the Union; and (3) the facility had since resumed

normal operations, meaning that no additional relevant information could be gleaned from viewing the accident scene, which was no longer in the same condition as at the time of the incident, because such findings are supported by the record evidence. GC Ex. 3 at 2.

23. To the failure to find that Caterpillar's September 16 letter to the Union also invited the Union to "bring any additional facts or authority that you deem relevant" to the Company's attention, because such findings are supported by the record evidence. GC Ex. at 3.

24. To the failure to find that Caterpillar's September 16 letter to the Union, in reference to the Union's decision to file an unfair labor practice charge, restated its position that it was not required to allow access to a Union official who showed up unannounced at the facility, and that any dispute concerning access was "more appropriately addressed through [] further discussions, rather than in administrative proceedings or litigation," because such findings are supported by the record evidence. GC Ex. at 3.

25. To the findings that selectively quote and characterize an exchange of letters between Caterpillar and the Union, ALJD, p. 4, lines 8-16, because such findings are contrary to the record evidence. GC Exhs. 4-6.

26. To the failure to find that in response to the Union's September 26 letter (GC Ex. 4), Caterpillar's October 10 letter also explained that: (a) the Union was present for any witness interviews conducted by OSHA; (b) there was no need for on-site access to re-interview any witness, as such interviews could take place at the local Union hall; (c) there was an existing grievance procedure for handling health and safety grievances; (d) Union official Uebele was the crane operator during the reenactment and would be in the best position to answer the Union's safety representatives questions while the video reenactment was being viewed, because such findings are supported by the record evidence. GC 5.

27. To the failure to find that the Union's statement in its October 17 letter that "the... 'reenactment' was not adequate and does not obviate the need for an onsite investigation" was made before the Union ever viewed Caterpillar's footage of the accident reenactment, or conducted any further investigation into the matters raised by Caterpillar in its September 26 letter, because such findings are supported by the record evidence. GC 5; Tr. 214-15, 223-26, 232-36.

28. To the finding that selectively quotes Caterpillar's November 15 letter, ALJD, p. 4, lines 16-22, because such findings are contrary to the record evidence. GC 7(a).

29. To the failure to find that in response to the Union's October 17 letter (GC Ex. 6), Caterpillar's November 15 letter explained that it would prepare a written response to the questions raised by the Union, and also stated that if the Union had further questions, the Company was willing to discuss the matter further, because such findings are supported by the record evidence. GC 7(a).

30. To the failure to find that Caterpillar, by letter dated January 12, 2012, subsequently provided the Union with a detailed response to the questions raised in the Union's October 17 letter, because such findings are supported by the record evidence. GC 11.

31. To the failure to find that Caterpillar's January 12 letter also listed the materials the Company had produced and was willing to produce, including copies of the investigatory file prepared by the local law enforcement officers who investigated the September 8 accident, photographs taken by management representatives during the post-accident investigation, and copies of the old and new standard work protocols for the crawler frame turning procedure, because such findings are supported by the record evidence. GC 11.

32. To the failure to find that Caterpillar's January 12 letter also provided details regarding the crane operator's function during the reenactment of the accident, the usage of wood cribbing during the operation on September 8 and more generally at the facility, the facility's use of rotating fixtures, or clamps, to turn the crawler frames, and the development of new standard work protocols for the procedure, because such findings are supported by the record evidence. GC 11.

33. To the failure to find that Caterpillar's January 12, letter also invited the Union to identify any other materials it might consider relevant to the September 8 accident, because such findings are supported by the record evidence. GC 11.

34. To the failure to find that the Company's February 24, 2012 letter advised the Union that if, after reviewing the new standard work protocols the Union still had questions about the procedure, "we can arrange to video the procedure as it is currently being performed under the new protocols, followed by a discussion to include Ms. Thompson and safety representatives from the facility, so that we may answer any such questions," because such findings are supported by the record evidence. GC Ex. 15; Tr. 101-102.

35. To the failure to find that the Union never responded to the Company's offer in its February 24 letter, because such findings are supported by the record evidence. Tr. 339.

36. To the failure to find that the Union's safety representative never conducted any interviews of any witnesses, because such findings are supported by the record evidence. Tr. 232-33, 234-36.

37. To the failure to find that the Union's safety representative never attempted to discuss with Caterpillar any of the materials that the Company had produced, request any

additional information, or seek clarification or further discussion with the Company, because such findings are supported by the record evidence. Tr. 223-26.

38. To the failure to find that any reasons offered by the International Union's safety representative as to why the information provided by Caterpillar was inadequate were identified for the first time at the trial in this matter, because such findings are supported by the record evidence. Tr. 217-19, 224, 230.

39. To the failure to find that another International Union safety representative prepared a report describing the accident and identifying potential causes and that such evidence was relevant to the relevant balancing testing, because such findings are supported by the record evidence. Tr. 235-27, 240, 242, R.Ex. 1; *Holyoke Water Power Co.*, 273 NLRB 1369 (1985).

40. To the failure to find that any third-party access granted to the South Milwaukee facility occurred before Caterpillar acquired that facility, because such findings are supported by the record evidence. Tr. 32, 109-10, 331-34.

41. To the finding that before the fatality Caterpillar and its predecessor, Bucyrus, frequently allowed visitors to enter the facility, ALJD, p. 6, lines 3-7, because such findings are contrary to the record evidence. Tr. 331-34.

42. To the finding that Bolhous "acknowledged Caterpillar conducts customer, employee and student tours at the facility." ALJD, p. 6, lines 9-10, because such findings are contrary to the record evidence. Tr. 331-32.

43. To the finding that Bolhous "recounted politicians and civic groups periodically visiting," ALJD, p. 6, line 10, because such findings are contrary to the record evidence. Tr. 333-34.

44. To the failure to find that any student tours occurred prior to Caterpillar's acquisition of the South Milwaukee facility, because such findings are supported by the record evidence. Tr. 332.

45. To the failure to find that any visits by politicians and civic groups occurred prior to Caterpillar's acquisition of the South Milwaukee facility, because such findings are supported by the record evidence. Tr. 333-34.

46. To the findings regarding changes to the South Milwaukee product lines and manufacturing procedures and the risks associated with outsiders entering the facility, ALJD, p. 6, lines 10-13, because such findings have no bearing on the relevant balancing test. *Holyoke, supra.*

47. To the findings regarding the OSHA citation issued to Caterpillar, ALJD, p. 6, lines 18-21, because such findings have no bearing on the relevant balancing test. *Holyoke, supra.*

48. To the findings regarding the alleged deficiencies identified by the Union's safety representative in the information offered by Caterpillar, ALJD, p. 6, lines 27-37, because none of these alleged deficiencies were ever disclosed prior to the trial in this matter. Tr. 217-19, 224, 230.

49. To the finding that Caterpillar was the first company that refused to grant the Union safety representative access following a fatality, ALJD, p. 6, lines 39-40, because such findings have no bearing on the relevant balancing test. *Holyoke, supra.*

50. To the finding that Caterpillar failed to produce an expert, or other witness, who refuted the claim that an onsite visit was required, ALJD, p. 6, fn. 14, because such findings are contrary to the record evidence, and the failure to produce an expert has no bearing on the

relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

51. To the finding that if the Union safety representative had been granted access, she would have “carefully studied the crane operations connected to the fatality,” ALJD, p. 7, lines 1-2, because such findings are contrary to the record evidence. Tr. 197-99, 217-19, 224, 257-59.

52. To the findings regarding Caterpillar’s reasons for denying access, ALJD, p. 7, lines 11-20, because such findings are contrary to the record evidence and the relevant balancing test. GC Exs. 3, 5, 7(a), 9(a), 14(a), 15, 17, 19, 25; *Holyoke, supra*.

53. To the finding that Caterpillar violated Section 8(a)(5), when it failed to grant the Union access to the facility in connection with the September 8 fatality, ALJD, p. 7, lines 24-25, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

54. To the finding that generally, an employer must provide requested information to a union representing its employees, whenever there is a probability that such information is necessary and relevant to its representational duties; that this duty encompasses an obligation to provide bargaining and grievance-processing information, that the standard for relevancy of such information is a “liberal discovery-type standard,” and that such evidence need only have a bearing on the disputed issue, ALJD, p. 7, lines 25-32, because this case does not involve a dispute over requested information. *Holyoke, supra*.

55. To the finding that information, which concerns unit terms and conditions of employment is “so intrinsic to the core of the employer-employee relationship” that it is presumptively relevant, ALJD, p. 7, lines 34-36, because this case does not involve a dispute over requested information. *Holyoke, supra*.

56. To the finding that when material is presumptively relevant, the burden shifts to the company to establish a lack of relevance, ALJD, p. 8, lines 1-2, because the cases on which the ALJ relies relate to information requests, not requests for inspection of a premises. *Holyoke, supra*.

57. To the failure to find that under *Holyoke Water Power Co.*, 273 NLRB 1369 (1985), even though “the presence of a union representative on the employer’s premises may be relevant to the union’s proper performance of its representative duties,” that did not mean, *ipso facto*, the employer was obligated to open its doors, *id.* at 1370, because such precedent reflects the balancing test that should have been applied in this case. *Id.* at 1370.

58. To the failure to find that under *Holyoke, supra*, “an employer’s right to control its property . . . must be weighed in analyzing whether an outside union representative should be afforded access to an employer’s property,” *id.* (citation omitted), because such precedent reflects the balancing test that should have been applied in this case. *Id.*

59. To the failure to find that under *Holyoke, supra*, “where it is found that a union can effectively represent employees through some alternate means other than by entering on the employer’s premises, the employer’s property rights will predominate, and the union may properly be denied access.” *Id.*; see also *Brown Shoe Co. v. N.L.R.B.*, 33 F.3d 1019, 1023 (8th Cir. 1994), because such precedent reflects the balancing test that should have been applied in this case. *Id.*

60. To the finding that, in applying the balancing test, the Board has “frequently found that a union’s right to access a plant to inspect or survey for hazardous health and safety conditions outweighs the employer’s property interests,” ALJD, p. 8, lines 8-18, because the Board’s holdings in other cases cannot be substituted for the required balancing test in this case. *Holyoke, supra.*

61. To the finding that the Union’s right to access the facility outweighed Caterpillar’s property interests, ALJD, p. 8, lines 20-21, because such findings are contrary to the record evidence, the relevant balancing test and precedent concerning Caterpillar’s significant property interests. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*; *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956), *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

62. To the finding that, in weighing a union’s interests, the Board “heavily favors access rights, where such rights are being exercised by a union in order to promote a unit’s legitimate health and safety interests,” ALJD, p. 8, lines 21-23, because such findings are contrary to the relevant balancing test. *Holyoke, supra.*

63. To the finding that the Union critically needed to enter the facility, in order to directly observe the manufacturing area, ALJD, p. 8, lines 23-24, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Hoyoke, supra.*

64. To the finding that a “conclusive finding on causation” would have permitted the Union to enter into an intelligent dialogue with Caterpillar regarding ways to enhance workplace safety, and could have ultimately prevented another senseless tragedy, ALJD, p. 8, lines 25-27, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

65. To the finding that Caterpillar, OSHA and the Police’s failure to find an exact cause behind the fatality heightened the Union’s interest in the ERT performing a comprehensive onsite inspection, ALJD, p. 8, lines 27-29, because such findings are contrary to the relevant balancing test. *Holyoke, supra*.

66. To the finding that the Union’s safety representative “persuasively demonstrated that the accident investigation materials that Caterpillar previously submitted to the Union were deficient, and an onsite survey remained necessary,” ALJD, p. 8, lines 29-31, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

67. To the finding that the evidence provided by Caterpillar, including photographs, reports, Standard Work protocols and DVD evidence, were poor substitutes for the information that could have been obtained during an onsite survey, ALJD, p. 8, n. 18, because such findings are contrary to the record evidence and the relevant balancing test. ; Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-

26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

68. To the finding that the DVD provided by Caterpillar was a poor substitute for a three dimensional onsite inspection, ALJD, p. 8, n. 18, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

69. To the finding that the Union maintained a substantial representational interest in conducting an onsite inspection, and had no alternative methodology to obtain comparable safety-related information regarding the fatality, ALJD, p. 8, lines 31-33, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

70. To the failure to find that the Union's decision not to engage Caterpillar in any substantive discussion on any possible alternate means of satisfying the Union's representational interest clearly tipped the balance in favor of Caterpillar's significant property interests under the relevant balancing test because such findings are supported by the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

71. To the finding that Caterpillar's competing interests were limited to preventing the potential dissemination of its confidential manufacturing processes and in preventing visitors from interfering with its operations, ALJD, p. 8, lines 35-39, because such findings are contrary to the record evidence, the relevant balancing test and precedent concerning Caterpillar's significant property interests. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*; *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956), *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

72. To the finding that, in weighing the competing interests, Caterpillar failed to carry its burden of showing that there were alternative means available to the Union, which would have permitted it to effectively represent the unit on this key safety issue, ALJD, p. 8, lines 39-41, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

73. To the finding that the Union's safety representative credibly testified that she would not have interfered with production during her survey, ALJD, p. 8, lines 41-42, because such findings are contrary to the record evidence, the relevant balancing test and precedent concerning Caterpillar's significant property interests. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91,

385-92; *Holyoke, supra*; *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956), *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

74. To the finding that Caterpillar's property interest was lessened to a degree by a considerable history of permitting non-employee visitors to access the facility, and that although most of the visitors entered under Bucyrus' regime, such visits have not changed since Caterpillar's takeover, ALJD, p. 8-9, lines 42-43, 1-2 & n. 19, because such findings are contrary to the record evidence, the relevant balancing test and precedent concerning Caterpillar's significant property interests. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 331-34, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*; *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956), *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

75. To the finding that Caterpillar's interest in protecting its confidential manufacturing procedures could have been sufficiently addressed by negotiating a separate confidentiality agreement with the Union concerning the inspection, ALJD, p. 9, lines 2-4, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

76. To the finding that because the parties successfully negotiated confidentiality agreements regarding the DVD, Workplace protocols and other documents, there is no reason why an analogous agreement could not have been negotiated regarding on-site access, ALJD, p. 9, lines 4-6, because such findings are contrary to the record evidence, the relevant balancing test

and precedent concerning Caterpillar's significant property interests. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92 ; *Holyoke, supra*; *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956), *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

77. To the finding that the *Holyoke* balancing test tips in favor of access, ALJD, p. 9, lines 8-9, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

78. To the finding that the parties shall bargain concerning appropriate safeguards that will dually protect Caterpillar's confidentiality concerns while facilitating a comprehensive onsite safety survey, ALJD, p. 9, lines 8-11, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

79. To the finding that Caterpillar violated Section 8(a)(1) and (5) of the Act by denying the Union's request to access its facility, in order to conduct a health and safety inspection, ALJD, p. 9, lines 33-34, because such findings are contrary to the record evidence, the relevant balancing test and precedent concerning Caterpillar's significant property interests. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330,

339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*; *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956), *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

80. To the finding that the health and safety inspection was relevant to the discharge of the Union's representational duties, ALJD, p. 9, lines 34-35, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

81. To the conclusion that Caterpillar violated Section 8(a)(1) and (5) of the Act by denying the Union access to its premises before it bargained in good faith with the Union concerning appropriate confidentiality safeguards associated with such access, ALJD, p. 9, lines 35-39, because such findings are contrary to the record evidence and the relevant balancing test. Joint Exs. 1, 2; R. 1; GC 2-26; Tr. 54-59, 79-82, 99, 101-02, 120-21, 157-66, 171-75, 177-78, 197-99, 210-11, 215-19, 222-26, 232, 234-37, 240, 242-43, 260-61, 270, 309-311, 314-16, 330, 339, 341-43, 345, 373-74, 383, 379-91, 385-92; *Holyoke, supra*.

82. To the recommended cease and desist order and Appendix, ALJD, p. 9, lines 43-44, p. 10, lines 1-41, fn. 20-21, p. 11, lines 1-17, fn 22, and Appendix, because such finding is contrary to the record evidence cited above in Paragraphs 1-82 and applicable precedent. *Holyoke, supra*; *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956), *Lechmere, Inc. v. NLRB*, 502 U.S. 527 (1992).

Respectfully submitted,

CATERPILLAR INC.

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**CERTIFICATE OF SERVICE**

The undersigned, one of the attorneys for Respondent, hereby certifies that she has caused a true and correct copy of the foregoing Exceptions to the Administrative Law Judge's Recommended Decision and Order to be served upon:

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via electronic mail where indicated and regular U.S. Mail this 17th day of October 2012.

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