

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGIONS 13 AND 20

NEXEO SOLUTIONS, LLC

and

TRUCK DRIVERS, OIL DRIVERS,  
FILLING STATION AND PLATFORM  
WORKERS' UNION, LOCAL NO. 705, AN  
AFFILIATE OF THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

CASES 13-CA-46694  
13-CA-62072  
20-CA-35519

and

BROTHERHOOD OF TEAMSTERS AND  
AUTO TRUCK DRIVERS, LOCAL NO. 70  
OF ALAMEDA COUNTY, AFFILIATED  
WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

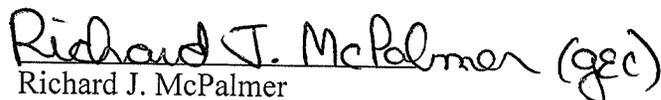
COUNSEL FOR THE ACTING GENERAL COUNSEL'S EXCEPTIONS  
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respectfully submitted:

  
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Counsel for the Acting General Counsel, pursuant to Section 102.46 of the Board's Rules and Regulations, excepts to the following portions of the Decision of Administrative Law Judge William G. Kocol in Nexeo Solutions, LLC, <sup>1</sup> dated August 30, 2012:

1. The ALJ's failure to find that the Purchase and Sale Agreement ("P&S Agreement") between Ashland, Inc., and TPG Accolade, LLC (which later changed its name to Nexeo Solutions, LLC) was a matter of public record since it was filed with the U.S. Securities and Exchange Commission ("SEC") on November 10, 2010. ALJD p. 5, line 5.
2. The ALJ's failure to find that Schedule 7.5(a) of the P&S Agreement identified by name the following statutory supervisors employed by Ashland Distribution Company (the predecessor employer) as "employees" who would be retained by Respondent: Director of Human Resources Paul Fusco, Fairfield Plant Manager Sharon Hartman, Regional Logistics Manager Jack Brewer, Willow Springs Plant Manager Tony Kuk, and Regional Logistics Manager Pat Cassidy. ALJD p. 5, lines 1-2.
3. The ALJ's failure to describe or consider in any detail the "[m]any other documents" (i.e., transition-related written communications) disseminated to unit employees employed in the Fairfield, California facility between November 2010 and February 2011. ALJD p. 5, lines 24-25.
4. The ALJ's finding that Nexeo Solutions, LLC ("Respondent") never misled Teamsters Local No. 70 ("Local 70"), Teamsters Local 705 ("Local 705"), or the unit employees represented by those respective unions, "into believing that their benefits would be *identical* as opposed to *comparable in the aggregate* to the ones they enjoyed at Ashland. Rather the

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<sup>1</sup> Hereinafter the National Labor Relations Act will be referred to as the "Act"; the National Labor Relations Board hereinafter is the "Board"; the Administrative Law Judge hereinafter is the "ALJ"; citations to the ALJ's decision are hereinafter referred to as "ALJD\_\_"; the Acting General Counsel's Exhibits are hereinafter referred to as "GC\_\_"; Respondent's Exhibits are hereinafter referred to as "R\_\_"; Charging Party's Exhibits are hereinafter referred to as "CP\_\_"; and the citations to the transcript are hereinafter referred to as "Tr. \_\_".

communications made clear that the benefits would be different and the employees would be informed of them as soon as they were developed.” ALJD p. 5, lines 27-30.

5. The ALJ’s failure to consider for the truth of the matter asserted any conversation between Local 705 officials and Ashland managers concerning the consequences of the sale. ALJD p. 5, lines 38-39.

6. The ALJ’s conjecture that Local 705 seemed to repeatedly question Ashland managers in an effort to get them say something slightly different than the actual terms of the P&S Agreement which obligated Respondent to offer employment to all of Ashland’s employees and to provide them with “wages no less favorable” and “benefits, variable pay, incentive or bonus opportunities under plans, programs and arrangements that are substantially comparable in the aggregate to those provided by Ashland.” ALJD p. 5, line 40 to p. 6, line 1.

7. The ALJ’s failure to specifically find that Local 705 Representative Neil Messino shared the relevant terms of the P&S Agreement with the drivers employed at the Willow Springs, Illinois facility during three union meetings held between mid-December 2010 and January 4, 2011. ALJD p. 5, lines 30-32.

8. To the extent applicable, the ALJ’s failure to attribute to Respondent transition-related written communications disseminated to unit employees employed at the Fairfield facility between November 2010 and February 2011. ALJD, p. 5-6.

9. The ALJ’s inadvertent failure to recount that the Consolidated Amended Complaint also alleged that Respondent violated Section 8(a)(1) and (5) of the Act at the Willow Springs facility by unilaterally eliminating overtime pay for working more than 8 hours per day and instead requiring the drivers to work more than 40 hours per week in order to receive overtime pay. ALJD p. 6, lines 13-22.

10. The ALJ's failure to find that the drivers employed at the Willow Springs facility had been covered by collective bargaining agreements that also provided for a Local 705 Health and Welfare Fund. Under this plan, the drivers never had to pay any insurance premiums and had low annual deductibles of \$400/\$1,200 (individual/family). The drivers also did not have to meet these deductibles before having their doctor's visits and prescription costs covered. They instead simply paid a \$20/\$40 copay (primary physician/specialist) for doctor visits and a copay for prescriptions of \$5 or \$25 (generic vs. brand name drugs). Equally important, the drivers received retiree health insurance benefits. ALJD p. 6, lines 32-36.

11. The ALJ's finding that all of the drivers employed at the Willow Springs facility initially signed Respondent's offer of employment letter "under protest" and later signed the letter again without adding any language to it. ALJD p. 10, lines 45-48.

12. The ALJ's inadvertent, erroneous description of the alleged change to Fairfield unit employees' "health and welfare" benefits. ALJD p. 13, lines 10-11. As corrected by the April 10, 2012, Amendment to Complaint (GC 1(cc), p. 2), Paragraph 7(a) to the Complaint alleges that on April 1, 2011, Respondent moved its employees from health and dental insurance plans in place under Ashland to Respondent's own health and dental plans.

13. The ALJ's failure to find that the unit employees employed at the Fairfield, California facility were provided certain health insurance benefits under the collective-bargaining agreement with Ashland, including a vision care plan and a benefit entitled "Alive & Well Labwork." ALJD p. 13, lines 15-22.

14. The ALJ's inadvertent, erroneous description of the April 1, 2011, change to Fairfield unit employees' health insurance coverage. ALJD p. 14, lines 16-17. The change was not from "Local 70's health insurance fund" to Respondent's plan but, rather, from the health

insurance benefits provided under the collective-bargaining agreement with Ashland to Respondent's plan. See GC 1(cc), p. 2; see also GC 1(ee) (Respondent Answer to Amendment to Complaint), p. 3.

15. The ALJ's failure to follow the holding in *Springfield Transit Management*, 281 NLRB 72, 78 (1986) and *The Denham Co.*, 206 NLRB 659, 660 (1973) and 218 NLRB 30, 31 (1975), which established that Respondent was a perfectly clear successor based on the terms of the P&S Agreement that obligated Respondent to retain all of Ashland's employees under terms and conditions substantially comparable in the aggregate to those provided by Ashland. ALJD p. 16, line 43 to p. 17, line 22.

16. The ALJ's finding that the P&S Agreement "did not purport to set initial terms of employment; rather, it indicated a framework for a benefit package the details of which would be determined later." ALJD p. 17, lines 22-24.

17. The ALJ's conclusion that the Acting General Counsel's first theory on the perfectly clear successor issue in this case does not support a finding that Respondent was obligated to bargain to agreement or good-faith impasse before implementing initial employment terms. ALJD p. 17, lines 24-26.

18. The ALJ's rejection of the GC's second theory of violation, as it pertained to the Fairfield, California facility. ALJD p. 17, lines 36-37

19. The ALJ's conclusion that there was no misleading of employees by Respondent or Ashland. ALJD p. 17, lines 37-38.

20. The ALJ conclusion that the "totality of messages that were conveyed to the employees and to Local 70 . . . advised employees that details of the employment offers would follow." ALJD p. 17, lines 38-40.

21. The ALJ's conclusion that the Board's holding in *Elf Atochem North America, Inc.*, 339 NLRB 796 (2003), was inapplicable here because Respondent, "in a timely fashion," provided unit employees with specific details concerning their initial terms. ALJD p. 17, line 46 to p. 18, line 4.

22. The ALJ's focus on the question of whether Respondent's initial terms were in fact comparable in the aggregate to those experienced under Ashland, and his conclusions that the "record does not allow me to make any assessment as to whether [Respondent and Ashland's] benefit packages, in their entirety, were comparable in the aggregate. Nor could I comfortably make such an assessment even if the record was fully developed and substitute my judgment for that of [Respondent] or Ashland, the parties who made the agreement." ALJD p. 18, lines 6-14.

23. The ALJ's conclusion that the General Counsel has not established that Respondent was obligated to first bargain with Local 705 or Local 70 before it offered employment upon terms it set forth in the mid-February 2011 employment offer letters. ALJD p. 18, lines 15-17.

24. To the extent raised by Respondent, the ALJ's failure to reject the affirmative defense that Respondent's implementation of initial terms of employment for the Fairfield unit employees was justified by good-faith bargaining impasse.

25. The ALJ's recommendation that the allegations in the Consolidated Amended Complaint alleging that Respondent violated Section 8(a)(1) and (5) of the Act by unlawfully moving unit employees from existing retirement and health insurance plans to its company sponsored plans be dismissed. ALJD p. 18, lines 17-19.

26. The ALJ's inadvertent failure to recount that the Consolidated Amended Complaint also alleged that Respondent violated Section 8(a)(1) and (5) of the Act at the Willow Springs facility by unilaterally eliminating overtime pay for working more than 8 hours per day and instead requiring the drivers to work more than 40 hours per week in order to receive overtime pay. ALJD p. 18, lines 23-27.

27. The ALJ's inadvertent failure to conclude that Respondent violated Section 8(a)(1) and (5) of the Act at the Willow Springs facility by unilaterally eliminating overtime pay for working more than 8 hours per day and instead requiring the drivers to work more than 40 hours per week in order to receive overtime pay, despite correctly making such a finding of fact in his decision (see ALJD p. 12, lines 21-24). ALJD p. 18, lines 23-34.

28. The ALJ's failure to conclude, as a matter of law, that Respondent violated Section 8(a)(5) and (1) of the Act, as alleged, by implementing changes to Willow Springs and Fairfield unit employees' health and pension benefits without first bargaining to agreement or good-faith impasse with Local 705 and Local 70, respectively. ALJD p. 19, lines 27-37.

29. The ALJ's inadvertent failure to order an appropriate remedy for Respondent's unlawful unilateral elimination of overtime pay at the Willow Springs facility for working more than 8 hours per day and instead requiring the drivers to work more than 40 hours per week in order to receive overtime pay. ALJD p. 19, lines 43-46; ALJD p. 20, lines 18-21; ALJD p. 21, lines 1-3.

30. The ALJ's failure to order an appropriate remedy for Respondent's unlawful unilateral cessation of contributions to the Local 705's Pension Trust fund and then moving its Willow Springs unit employees to the company's 401(k) plan. ALJD p. 19, lines 43-46; ALJD p. 20, lines 18-21; ALJD p. 21, lines 1-3.

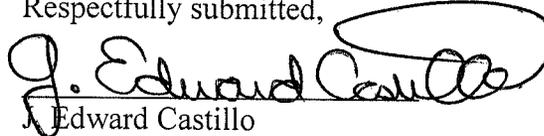
31. The ALJ's failure to order an appropriate remedy for Respondent's unlawful unilateral cessation of contributions to the Western Conference of Teamsters PEER 80 pension fund and then moving its Fairfield unit employees to the company's 401(k) plan. ALJD p. 19, lines 43-46; ALJD p. 20, lines 18-21; ALJD p. 21, lines 1-3.

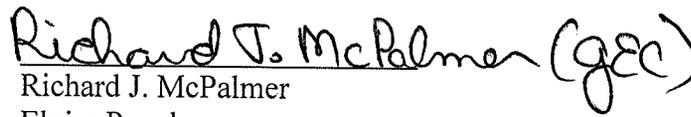
32. The ALJ's failure to order an appropriate remedy for Respondent's unlawful unilateral cessation of contributions to Local 705's Health and Welfare fund and then moving its Willow Springs unit employees to the company's health insurance plan. ALJD p. 19, lines 43-46; ALJD p. 20, lines 18-21; ALJD p. 21, lines 1-3.

33. The ALJ's failure to order an appropriate remedy for Respondent's unlawful unilateral changes to Fairfield unit employees vision insurance and cessation of the "Alive & Well Labwork" benefit by way of moving of its Fairfield unit employees to the company's health insurance plan. ALJD p. 19, lines 43-46; ALJD p. 20, lines 18-21; ALJD p. 21, lines 1-3.

Dated at Chicago, Illinois, this 18th day of October 2012.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge have been served this 18th day of October 2012, in the manner indicated, upon the following parties of record.

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