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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 13

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, and BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS, LOCAL NO. 70 OF ALAMEDA COUNTY, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS	Case Nos. 13-CA-46694; 13-CA-62072; 20-CA-35519 **TEAMSTERS UNION LOCAL 70's EXCEPTIONS TO DECISION OF ADMINISTRATIVE LAW JUDGE**

Charging Party, Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70 of Alameda County ("Local 70"), hereby takes the following exceptions to the Decision of the Administrative Law Judge ("ALJ"):

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Exception 1	P.1	To the suggestion by the ALJ that "this case presents a close issue . . . [.]" There are several issues involved, and none of them are even close. Violations of the Act should have been found.
Exception 2	P. 2:11-36	To the manner which the ALJ set out these cases, which suggests that the cases were separately tried. They were consolidated and tried together. The ALJ's failure to treat these as consolidated cases limited the ability of the Charging Parties and General Counsel to present evidence.
Exception 3	P.5:25-26	To the suggestion that there was some limit in the Agreement of Purchase and Sale ("APS") to the retention the existing workforce. There was no such limit or restriction. To the contrary, the APS was written and enforced to ensure hiring of the entire existing workforce.
Exception 4	P.5:35-37	To the suggestion that Ashland managers were not agents of Nexeo. It was clear that those managers were agents of Nexeo from the beginning. On many occasions, the ALJ incorrectly limited examination of current Nexeo employees and former Ashland employees on a theory that they had not yet become agents of Nexeo.
Exception 5	P.5:35-6:8	To the failure of the ALJ to note that Local 70 also raised these same issues.
Exception 6	P.6:1-3	The ALJ's finding that the written communications made by Ashland track the communication by Nexeo compels a finding that they were acting in concert and that each was the agent of the other.
Exception 7	6:8-9	The employment continued completely uninterrupted. The suggestion that it was only "largely" uninterrupted is incorrect.
Exception 8	6:14-13:2	To the extent Local 705 and the General Counsel take exception to any portion of the decision referenced here, Local 70 specifically joins in those exceptions. The ALJ's conclusions are incorrect.
Exception 9	13:24-34	To the failure of the ALJ to find that Nexeo knew that every employee would continue employment. To the failure of the ALJ to find that Nexeo had no facts or evidence whatsoever to suggest that there was a single employee who would not continue in its employment.
Exception 9A	Passim	To the failure of the ALJ to find that Nexeo and Ashland negotiated in the APS significant terms and conditions of employment which applied both before and after the closure date.
Exception 10	14, fn. 11	To the failure of the ALJ to find affirmatively that there was no impasse in negotiations between Local 70 and Nexeo.

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Exception 10A	5:30-34	To the finding that Local 70 knew that the "benefit scheme would be comparable in the aggregate." Local 70 did not find out that Nexeo planned to change the plan until February 16.
Exception 11	15:4-6	To the failure of the ALJ to find that no impasse existed.
Exception 11A	5:35-36	To the failure of the ALJ to find that Paul Fusco, Tony Kuk, and other Ashland managers were acting as agents of Nexeo from, at the latest, December 1 and thereafter.
Exception 12	15:9-19:20	To the ALJ's entire analysis. Local 70 joins in the exceptions taken by Counsel for General Counsel and Local 705 to this entire analysis.
	Passim	To the ALJ's failure to analyze the transaction to recognize the significant benefits to both Ashland and Nexeo in retaining the employees in a seamless transaction.
	Passim	To the ALJ's failure to recognize that Nexeo was a perfectly clear successor by the terms of the APS.
	Passim	To the ALJ's failure to recognize that the APS restricted Ashland and Nexeo's ability to negotiate and that those arrangements were made without bargaining. If Ashland and Nexeo were able to negotiate significant terms and conditions of employment as part of the APS, under *Burns* Nexeo has an obligation to bargain with the incumbent union.
Exception 13	15:43-44	Since the ALJ found that "there was little doubt that majority, if not all of the employees would . . . accept employment at Nexeo," Nexeo was not privileged to make any changes in wages, hours, and working conditions.
Exception 14	19, passim	To the failure of the ALJ to conclude, as a matter of law, that the employer violated the Act by implementing new conditions of employment without bargaining with Local 70. To the failure of the ALJ to conclude, as a matter of law, that Nexeo violated the Act by failing to recognize Local 70 before making any changes. To the failure of the ALJ to recommended that *Spruce-Up* be overruled or hold it does not apply to these circumstances.
Exception 15	19:40-20:9	To the failure of the ALJ to reinstate the former conditions, make the employees whole for the unilateral changes, or include other appropriate relief as part of the remedy, based upon the finding that the employer was the perfectly clear successor.
Exception 16	19:40-20:9	To the failure of the ALJ to recommend that the Notice in this case be posted the same length of time between when the Complaint issued and when the violation is remedied.

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Exception 17	19:40-20:9	To the failure of the ALJ to recommend that Notice be posted where the public can see it. To the failure of the ALJ to recommend that the employer be required to post the Notice, which the Board has required employers to post as a result of the recent rulemaking for at least two years.
Exception 18	20:11-21:32	To the order in its entirety for the reasons suggested above.
Exception 19		To the Notice to employees. The words "choose not to engage in any of these protected activities" should be deleted.
Exception 20		To the ALJ's refusal to reopen the record. *See* Order of May 15, 2012. The ALJ incorrectly refused to allow the request by the parties to reopen the record.
Exception 21	Passim	To the ALJ's repeated failure to allow witnesses to testify about the nature of the APS and the manner in which it was implemented. To the ALJ's limitation of evidence only to "wages, hours and working conditions." The evidence regarding the APS went to proof of agency status and the obligation of Nexeo to maintain all conditions of the business.
Exception 22		To the denial of the Motion to resume the hearing filed by Charging Party Local 70. *See* Order of July 9, 2012.
Exception 23		The ALJ improperly refused to resume the hearing after he had directed Local 70 and Respondent to meet and confer over a subpoena, where that meet and confer did not result in compliance with the subpoena or any other resolution.
Exception 24		To the ALJ's failure to enforce Subpoena Duces Tecum No. B-638965. *See* TR. 937-940.
Exception 25		The ALJ improperly limited the scope of the referenced subpoena, even though Respondent had failed to file a Motion to Quash.
Exception 26	Passim	To the failure of the ALJ to recognize that the WARN Act required Nexeo to act as the perfectly clear successor, because neither Nexeo nor Ashland gave WARN Act notices under state of federal law.
Exception 27		To the refusal of the ALJ to allow Neil Messino testify. *See* TR. 861-876. The testimony of Mr. Messino about an admission by a Nexeo employee was improperly rejected.

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Exception 28		To the refusal of the ALJ to allow Paul Fusco to testify about matters related to the entire APS and the transaction, because the testimony was not directly related to wages, hours and working conditions. *See* TR. 896, 904-905, 912-916, 922. The testimony of Mr. Fusco regarding the entire APS was relevant to the nature of the transaction. Furthermore, it was relevant to show that Ashland managers were acting on behalf of Nexeo in many matters from December 1 on. *See* TR. pp. 896, 904-905, 912-916, 922.
Exception 29	Passim	To the ALJ's restriction of evidence as to the separate locations

Charging Party also joins in all Exceptions filed by Counsel for the Acting General Counsel and by Counsel for Teamsters Local 705. Those Exceptions, as well as the briefing in support thereof, are incorporated here by reference.

Charging Party further requests Oral Argument before the Board regarding the application of the *Spruce-Up* doctrine, *Spruce-Up*, 209 NLRB 194 (1974), *enf'd* 529 F.2d 516 (4th Cir. 1975), which should be either overruled or limited.

Dated: October 18, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501. I certify that on October 18, 2012, **TEAMSTERS UNION LOCAL 70's EXCEPTIONS TO DECISION OF ADMINISTRATIVE LAW JUDGE** was e-filed on the NLRB's E-filing system and served a copy of on all parties below by electronic mail and regular U.S. mail:

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I certify under penaly of perjury that the above is true and correct. Executed at Alameda, California, on October 18, 2012.

/S/ Katrina Shaw
KATRINA SHAW