UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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	)	

EXCEPTIONS OF CHARGING PARTY LOCAL 705,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
TO THE DECISION AND RECOMMENDED ORDER
OF THE ADMINISTRATIVE LAW JUDGE

Charging Party Local 705, International Brotherhood of Teamsters, pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, files its Exceptions to the Decision and Recommended Order of Administrative Law Judge William G. Kocol ("the ALJ"), issued on August 30, 2012, as follows:

1. Local 705 excepts to the ALJ's failure to find that Schedule 7.5(a) of the Agreement of Purchase and Sale ("APS"), dated November 5, 2010, which Sections 7.5(a) and (b) of the APS state lists the names of all Employees to be offered employment by Nexeo, listed Ashland managers Robert Craycraft, Paul Fusco, Brian Brockson, Pat Cassidy, and Tony Kuk, among others, and confirmed that each of those managers would be retained by Nexeo. In support, Local 705 cites Tr.

36, 575.[1]

2. Local 705 excepts to the ALJ's rulings sustaining the Company's objections to the proffered testimony that on November 8, 2010, Ashland Human Resources Business Partner Paul Fusco told Local 705 lead negotiator Neil Messino that the buyer was going to retain all of the employees (Tr. 75; ALJD p.5, lines 35-39), and to the ALJ's failure to find that Fusco's statement was attributable to Nexeo on the basis that the APS specifically provided by name that Fusco would become employed by Nexeo (Tr. 36, 575); Fusco had already been told by his boss, Jodi Lewis, in October or November 2010, that he would be retained by the new company (Tr. 1045); the "Questions and Answers for Employees" document pre-cleared with Nexeo and distributed November 8, 2010 informed employees that "the current management team will transfer with the business" (G.C. Exh. 40, 56); and Fusco was in fact retained by Nexeo in his same position (Tr. 70).

3. Local 705 excepts to the ALJ's failure to find that on November 8, 2010, Ashland Distribution President Robert M. Craycraft distributed a letter to "Dear Valued Customers" which stated, in pertinent part (G.C.Exh. 46, emphasis added):

> Our goal is to ensure a seamless transition to Ashland Distribution operating as an independent distribution business. <u>The same great people will provide the same great service</u>....

and to the ALJ's failure to find that Craycraft's statement was attributable to Nexeo on the basis that (1) the parties stipulated that the information contained in this letter was provided to Nexeo for

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[1] The Acting General Counsel's exhibits in the NLRB hearing are referred to as "G.C.Exh. X;" exhibits of Respondent Nexeo Solutions, LLC are referred to as "Resp.Exh. X;" exhibits of Charging Party Local 705, International Brotherhood of Teamsters, are referred to as "C.P.Exh. X;" and Joint Exhibits are referred to as "Jt.Exh. X." Pages of the transcript of the hearing before Administrative Law Judge Kocol are referred to as "Tr. X." The Decision of the Administration Law Judge is referred to as "ALJD, p. X, line Y."

advance approval pursuant to Section 11.7 of the APS (Jt. Exh. 1, ¶ 5); (2) the APS specifically provided by name that Craycraft would become employed by Nexeo (Tr. 36, 575); (3) the "Questions and Answers for Employees" document pre-cleared with Nexeo and distributed November 8, 2010 informed employees that "the current management team will transfer with the business" (G.C. Exh. 40, 56); and (4) Craycraft was in fact retained by Nexeo after the closing.

4. Local 705 excepts to the ALJ's ruling sustaining the Company's objections to the proffered testimony of Neil Messino that Willow Springs plant manager Tony Kuk told him that in a conference call in the week of November 8, 2010, with future Nexeo CEO David Bradley appointed by TCP and all of the Ashland Distribution managers, Ashland Distribution President Robert M. Craycraft told the managers that they would all be hired by Nexeo (Tr. 868-877) and to the ALJ's failure to find that this statement was attributable to Nexeo.

5. Local 705 excepts to the ALJ's failure to find that on November 12, 2010, Ashland Distribution issued "Talking Points for Customers" stating that "All current AD [Ashland Distribution] employees are staying with the business" (G.C.Exh. 94, p. 2), and to the ALJ's failure to find that Ashland's statement was attributable to Nexeo.

6 Local 705 excepts to the ALJ's failure to find that in mid-November, 2010, a notice was posted on the Ashland employee bulletin boards stating that "All individuals currently dedicated to supporting the existing Ashland distribution business will be transferred to the new organization" (Tr. 734-735; G.C.Exh. 93), and to the ALJ's failure to find that the notice was attributable to Nexeo.

7. Local 705 excepts to the ALJ's rulings sustaining the Company's objections to the proffered testimony that at "town hall meetings" with Willow Springs employees on November 11, 2010, Ashland Plant Manager Tony Kuk stated, "It's going to be 'business as usual;' everyone is

going to be retained; and there won't be any changes except the name on the paychecks and the signs on the trucks;" and Ashland Regional Logistics Manager Pat Cassidy stated, "The new company intends on keeping everyone. It's going to keep everything status quo" (Tr. 290-293; ALJD p.5, lines 35-39), and to the ALJ's failure to find that Kuk's and Cassidy's statements were attributable to Nexeo on the basis that the APS specifically provided by name that Kuk and Cassidy would become employed by Nexeo (Tr. 36, 575); the "Questions and Answers for Employees" document pre-cleared with Nexeo and distributed November 8, 2010 informed employees that "the current management team will transfer with the business" (G.C. Exh. 40, 56); and Kuk and Cassidy were in fact retained by Nexeo in their same positions (Tr. 70).

8. Local 705 excepts to the ALJ's rulings sustaining the Company's objections to the proffered testimony that after a town hall meeting on November 10, 2010, Union steward Mike Jordan asked Ashland Plant Manager Tony Kuk and Regional Logistics Manager Pat Cassidy, "Is everything in the union contract going to stay the same?"; Pat Cassidy responded, "As far as I'm concerned the new company is going to keep everything the same"; Jordan replied, "Good, because I'm about to complete 25 years. I need additional time for my pension benefits"; Cassidy responded, "I don't think there are going to be any issues"; and Tony Kuk nodded his head in agreement, and said, "Nothing's going to change." (Tr. 290-294; ALJD p.5, lines 35-39), and to the ALJ's failure to find that Kuk's and Cassidy's statements were attributable to Nexeo on the basis that the APS specifically provided by name that Kuk and Cassidy would become employed by Nexeo (Tr. 36, 575); the "Questions and Answers for Employees" document pre-cleared with Nexeo and distributed November 8, 2010 informed employees that "the current management team will transfer with the business" (G.C. Exh. 40, 56); and they were in fact retained by Nexeo in their same positions (Tr.

70).

9. Local 705 excepts to the ALJ's rulings sustaining the Company's objections to the proffered testimony that on December 3, 2010, Ashland Human Resources Business Partner Paul Fusco told Local 705 lead negotiator Neil Messino that the new company intended to offer employment to all Ashland employees and would maintain terms and conditions of employment (Tr. 92-93; ALJD p.5, lines 35-39), and to the ALJ's failure to find that Fusco's statements were attributable to Nexeo on the basis that the APS specifically provided by name that Fusco would become employed by Nexeo (Tr. 36, 575); Fusco had already been told by his boss, Jodi Lewis, in October or November 2010, that he would be retained by the new company (Tr. 1045); the "Questions and Answers for Employees" document pre-cleared with Nexeo and distributed November 8, 2010 informed employees that "the current management team will transfer with the business" (G.C. Exh. 40, 56); and Fusco was in fact retained by Nexeo in his same position (Tr. 70).

10. Local 705 objects to the ALJ's rulings sustaining the Company's objections to the proffered testimony that on December 10, 2010, plant manager Tony Kuk told Union steward Mike Jordan that "They're going to keep everyone, and everything is going to stay the same," and that after December 10 and into mid-February 2011, Kuk told Union stewards Mike Jordan and George Sterba two or three times a week that everybody was going to be retained, nothing is going to change, and it will be "business as usual" (Tr. 298-303; ALJD p.5, lines 35-39), and to the ALJ's failure to find that Kuk's statements were attributable to Nexeo on the basis that the APS specifically provided by name that Kuk would become employed by Nexeo (Tr. 36, 575); the "Questions and Answers for Employees" document pre-cleared with Nexeo and distributed November 8, 2010 informed employees that "the current management team will transfer with the business" (G.C. Exh.

40, 56); and Kuk was in fact retained by Nexeo in his position as plant manager (Tr. 70).

11. Local 705 excepts to the ALJ's failure to find that on December 13, 2010, Ashland Human Resource Business Partner Paul Fusco told Union representative Neil Messino that he had been hired by the new company; that the announcement would be made the next month; that Ashland Regional Logistics Manager Pat Cassidy had been hired on the Nexeo transition; and that Fusco believed plant manager Tony Kuk would also be hired on the transition team (Tr. 112-113).

12. Local 705 excepts to the ALJ's failure to find that on December 22, 2010, Paul Fusco wrote Neil Messino in an e-mail that he was "awaiting further direction from the new company and would be setting up dates for negotiations "on behalf of the new company" the next month, with copies of the e-mail send to Pat Cassidy and Tony Kuk (Tr. 116-118; G.C. Exh. 8).

13. Local 705 excepts to the ALJ's failure to find that on February 11, 2011, in a meeting in plant manager Tony Kuk's office, Kuk told Union stewards Mike Jordan and George Sterba that Kuk was now an employee of the new company, and that the new company was going to keep everyone and that the terms and conditions would stay the same (Tr. 310-312, 350-351, 355-357, 368-372, 382-383); and his failure to find that Kuk's statement was attributable to Nexeo because he was employed by Nexeo at the time.

14. Local 705 excepts to the ALJ's order denying the Acting General Counsel's motion to reopen the record in Chicago, and to the ALJ's ruling that the additional evidence the Acting General Counsel sought to offer was either hearsay or duplicative. (ALJD p.6, n.7.)

15. Local 705 excepts to the ALJ's July 9, 2012 order denying co-Charging Party Local 70, International Brotherhood of Teamsters ("Local 70")'s motion to resume the hearing, and to the ALJ's ruling that the additional evidence Local 70 sought to subpoena was a "fishing expedition."

(ALJD p.6, n.7.)

16. Local 705 excepts to the ALJ's omission, from his summary of the complaint allegations (ALJD p.6, lines 13-30), of the Consolidated Complaint's allegation that on April 1, 2011 Nexeo violated Section 8(a)(5) and (1) by unilaterally changing the overtime policy to eliminate overtime pay for working more than 8 hours per day, and instead requiring employees to work more than 40 hours per week in order to receive overtime pay. See Consolidated Complaint (G.C.Exh. 1(h)) ¶ VII(d).

17. Local 705 excepts to the ALJ's failure to include a finding, in his description of the February 15, 2011 meeting in Willow Springs, Illinois (ALJD p. 6, line 38-p.7 line 23), that at that meeting Nexeo's negotiator John Hollinshead stated that Nexeo would "mirror the current expired [Ashland] agreement" except for the Local 705 Pension Fund and that Nexeo would "look at" the Local 705 Health & Welfare Fund. In support, Local 705 cites the unrebutted testimony of Neil Messino, Tr. 135-136, and the ALJ's finding that Messino's testimony concerning the meetings was credible, ALJD p. 12 n.9.

18. Local 705 excepts to the ALJ's failure to include a finding that, although Nexeo agreed in Section 7.5(d) of the APS to provide former Ashland employees with "employee benefits...that are substantially equivalent in the aggregate to these provided by Ashland" (G.C. Exh. 6, p. 57; ALJD p. 4, lines 14-20, emphasis added), which would include the Local 705 Pension and Health and Welfare Plans, which were provided by Ashland through its contractually required contributions (see the definition of "Seller Benefit Plan" at page 14 of the APS (G.C.Exh. 6, p. 14)), Nexeo's February 17, 2011offers of employment to bargaining unit employees stated Nexeo's intention to provide only "benefits...that are comparable in the aggregate to plans and programs

sponsored by Ashland (G.C.Exh. 35; ALJD p. 8, lines 21-23, emphasis), a deliberate change which would exclude the Local 705 plans.

19. Local 705 excepts to the ALJ's finding that the Willow Springs, Illinois employees initially added the words "under protest" to their signatures on the offer letters but later again signed the letters without adding anything more to them. (ALJD p.10 lines 45-48, and p.2, lines 6-7.) Local 705 excepts to the ALJ's failure to find, instead, that the Willow Springs, Illinois employees initially crossed out certain words in the acceptance line so that it read, "I accept this offer of employment," and signed the offer letters with that amendment (G.C. Exh. 12; Tr. 139-141); and that subsequently on or about February 21, 2011, by agreement between the Union and the Company, Nexeo reissued the offer letters and the Willow Springs employees signed them with the notation "under protest." (G.C. Exh. 13; Tr. 141-144).

20. Local 705 excepts to the ALJ's failure to include a finding, in his summary of the parties' March 23, 2011 meeting and March 28, 2011 telephone call (ALJD p.11, lines 12-27 and 40-46), that Nexeo and Local 705 agreed that the parties needed to bring their actuaries into the negotiation meetings to try to reach an agreement on how to make employees whole for the change in pension plans. In support, the Union cites the testimony of John Hollinshead (Tr. 543-544) and Neil Messino (Tr. 171).

21. Local 705 excepts to the ALJ's failure to include a finding that, in the revised estimate that Nexeo provided to Local 705 on March 25, 2011 (see generally ALJD p.11 lines 29-30), Nexeo determined that 6 of the 32 bargaining unit employees could experience a shortfall as a result of moving from the Local 705 Pension Fund to the Nexeo 401(k) plan, depending on how much overtime they worked. (G.C. Exh. 19; Tr. 166-167, 462-463.)

22. Local 705 excepts to the ALJ's failure to include a finding that Nexeo's proposal of March 27, 2011 (see generally ALJD p.11, lines 30-38) would maintain overtime after 8 hours in a day, a guaranteed 8 hour day, a guaranteed 40 hour week, and vacation pay based on 50 hours per week, as already existed under the expired Ashland collective bargaining agreement. In support, Local 705 cites G.C.Exh. 20 at Articles 3(1), 9, 10, & 12(3); and G.C. Exh. 2.

23. Local 705 excepts to the ALJ's finding that the only time the issue of the elimination of the 8-hour and 40-hour guarantees has arisen since April 1, 2011 was one occasion in March 2012 when an employee was sent home without being paid for 8 hours (ALJD p.12 at 24-26). That finding is unsupported because the March 2012 incident was the only one of which Union steward Michael Jordan was aware (Tr. 334-335), but there is no evidence that it was in fact the only such occasion.

24. Local 705 excepts to the ALJ's failure to include an express finding and conclusion that Nexeo and Local 705 were not at impasse when Nexeo changed terms and conditions of employment on April 1, 2011. In support, Local 705 cites the ALJ's correct finding that Nexeo's lead negotiator conceded on March 31 that the parties were not at impasse (ALJD p.12, lines 9-10); and Messino's unrebutted testimony at Tr. 176.

25. Local 705 excepts to the ALJ's failure, once having correctly found "that it was perfectly clear (as a matter of fact and not as a legal conclusion) that Nexeo planned to retain all the employees" (ALJD p.15, lines 27-28), to conclude as a legal matter that Nexeo is a perfectly clear successor.

26. Local 705 excepts to the ALJ's failure, once having correctly found that Nexeo was

not a mere Burns[2] successor (ALJD p.15, lines 32-39), to conclude that Nexeo is a perfectly clear successor.

27. Local 705 excepts to the ALJ's failure, once having correctly found that "the fact pattern in Spruce Up [209 NLRB 194 (1974)] does not cover the fact pattern in this case" (ALJD p.16, lines 29-31), to conclude that Nexeo is a perfectly clear successor.

28. Local 705 excepts to the ALJ's finding that dicta in Spruce Up "has since become a holding that the caveat in Burns should be restricted to circumstances in which the new employer has either actively or by tacit inference, misled employees into believing they would all be retain[ed] without change in their working conditions or at least in circumstances where the new employer failed to clearly announce its announcement to establish a new set of working conditions prior to making the offer of employment" (ALJD p.16, lines 32-37), and "the holding in Spruce Up that, absent some deception, successor employers may unilaterally set initial terms of employment to the predecessor's employees" (ALJD p.17, lines 7-8).

29. Local 705 excepts to the ALJ's finding that "Spruce Up therefore makes it clear that we are not to rely on the language used by the Supreme Court in Burns alone; rather there must be at least a finding that a successor employer misled employees into believing their working conditions would remain the same." (ALJD p.16, lines 37-40.)

30. Local 705 excepts to the ALJ's reliance on Spruce Up and its progeny in a manner contrary to the Supreme Court's decision in NLRB v. Burns International Security Systems, 406 U.S. 272 (1972).

31. Local 705 excepts to the ALJ's reliance on Spruce Up and its progeny in a manner

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[2] NLRB v. Burns International Security Systems, 406 U.S. 272 (1972).

contrary to Board precedent; the ALJ's failure to follow the Board's decisions in Elf Atochem North America, 339 NLRB 796 (2003), The Denham Co., 218 NLRB 30 (1975), and Springfield Transit, 281 NLRB 72 (1986); and the ALJ's failure to acknowledge or consider the Board's decisions in Canteen Company, 317 NLRB 1052 (1995), enf'd, 103 F.3d 1355 (7th Cir. 1997); Helnick Corp., 301 NLRB 128 (1991); Fremont Ford, 289 NLRB 1290 (1988); Roman Catholic Diocese of Brooklyn, 222 NLRB 1052 (1976), enf. den. in part sub nom. Nazareth Regional High School v. NLRB, 549 F.2d 873 (2d Cir. 1977); and other Board decisions.

32. Local 705 excepts to the ALJ's finding that the APS "indicated a framework for a benefit package the details of which would be determined later. On February 16 and 16 Nexeo announced those details." (ALJD p.17, lines 22-24.)

33. Local 705 excepts to the ALJ's finding that "the General Counsel's first theory [that Nexeo is a perfectly clear successor based on the Agreement of Purchase and Sale] does not support a finding that Nexeo was obligated to bargain first concerning initial terms." (ALJD p.17, lines 25-26.)

34. Local 705 excepts to the ALJ's failure to find that Spruce Up is distinguishable.

35. Local 705 excepts to the ALJ's finding that "there was no misleading of employees by Nexeo or by Ashland" (ALJD p.17, lines 37-40). In support, Local 705 cites (1) Nexeo's promise in the APS that it would provide benefits that were "substantially comparable in the aggregate to those provided by Ashland "(ALJD, p. 4 lines 14-20; G.C.Exh. 6, p. 57 (Section 7.5(d))); (2) Company spokesman John Hollinshead's repeated promises to the Union that Nexeo would write checks to make whole any bargaining unit employees who were adversely affected by change to the Nexeo pension plan (ALJD p. 7, lines 8-11; ALJD p. 11, Lines 18-20; Tr. 156, 322-323; G.C.Exh.

19 at 1; Resp. Exh. 3 at 2); (3) the repeated statements of Ashland's managers that it would be "business as usual" and everything would stay the same "except the name on the paychecks and the sign on the trucks" (ALJD p. 5 lines 19-22; G.C.Exh. 40, ¶ 20; Tr. 92-93, 293-294, 298, 303, 310-312, 350-351, 355-357, 368-372, 382-383); and (4) the benefits provided by Nexeo were substantially inferior to the benefits provided by Ashland.

36. Local 705 excepts to the ALJ's finding that "the employees and the Unions were never misled into believing that their benefits would be identical as opposed to comparable in the aggregate" (ALJD p.5, lines 27-29). In support, Local 705 cites the absence of any record support for this finding and the repeated statements of Ashland and its managers that it would be "business as usual" and everything would stay the same "except the name on the paychecks and the signs on the trucks" (ALJD p. 5 Lines 19-22; G.C.Exh. 40, ¶ 20; Tr. 92-93, 290-294, 298, 303, 310-312, 350-351, 355-357, 368-372, 392-383).

37. Local 705 excepts to the ALJ's finding that "The totality of the messages that were conveyed" "were consistent with the terms of the APS and advised employees that details of the employment offers would follow." (ALJD p.17, lines 38-40.) In support, Local 705 cites the absence of any record support for this finding and the repeated statements of Ashland and its managers that it would be "business as usual" and everything would stay the same "except the name on the paychecks and the signs on the trucks" (ALJD p. 5 Lines 19-22; G.C.Exh. 40, ¶ 20; Tr. 92-93, 290-294, 298, 303, 310-312, 350-351, 355-357, 368-372, 392-383).

38. Local 705 excepts to the ALJ's finding that "the 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 29-30.) In support, Local 705 cites the absence of any record support

for this finding and the repeated statements of Ashland and its managers that it would be "business as usual" and everything would stay the same "except the name on the paychecks and the signs on the trucks" (ALJD p. 5 Lines 19-22; G.C.Exh. 40, ¶ 20; Tr. 92-93, 290-294, 298, 303, 310-312, 350-351, 355-357, 368-372, 392-383).

39. Local 705 excepts to the ALJ's finding that "Local 705 had a copy of the APS and knew of its content but thereafter seemed to repeatedly question Ashland managers in an effort to get them to say something slightly different" from the Agreement of Purchase and Sale. (ALJD p.5, line 40-p.6, line 1.) In support Local 705 cites the evidence that the Union began questioning Ashland managers in November 2010 (Tr. 71-73, 292-294) but did not receive a copy of the APS until December 10, 2010 (Tr. 88-100; G.C. Exh. 5, p.1); that the ALJ sustained Nexeo's objection as to why the Union asked its stewards to ask the retained Ashland managers if Nexeo was going to retain all of the employees and maintain the existing terms and conditions of employees; and that the ALJ refused to allow counsel for the General Counsel even to make an offer of proof that the Union did so to try to find out what Nexeo's plan was (Tr. 94-98).

40. Local 705 excepts to the ALJ's finding that Elf Atochem North America, 339 NLRB 796 (2003), is distinguishable on the grounds that Nexeo purportedly timely provided the employees with details concerning the initial terms and did not mislead the employees. (ALJD p.17, line 47-p.18, line 4.)

41. Local 705 excepts to the ALJ's failure to find that Nexeo misled employees and the Union into believing that they would receive a benefit package that would be comparable in the aggregate to the benefits provided by the predecessor employer (Agreement of Purchase and Sale § 7.5(d) (G.C. Exh. 6, p.57); G.C. Exhs. 40, 56), but then imposed initial terms that were not

comparable in the aggregate. (ALJD p.18, lines 6-12.) In support, Local 705 cites the record evidence described in Exception 42, below.

42. Local 705 excepts to the ALJ's failure to find that the Nexeo benefit package was not comparable in the aggregate to the benefit package the employees were receiving under Ashland (ALJD p.18, lines 9-13), based on the evidence that:

a. Nexeo's representatives repeatedly admitted that the changes would harm at least some employees and promised to "write a check" to make them whole (ALJD p.7, lines 8-11; ALJD p.11, lines 18-20; Tr. 156, 322-323; G.C. Exh. 19 at 1; Resp. Exh. 3 at 2), but subsequently on March 28 Nexeo's negotiator stated that he was no longer authorized to offer to make employees whole (ALJD p.11, lines 43-46), and Nexeo never made any such payment to the Willow Springs employees.

b. The Union's actuary calculated that the adverse impact of the change in retirement plans on bargaining unit employees totaled $1,329,021.02 (G.C.Exh. 43, p. 1; Tr. 201-202, 218-220).

c. The benefits provided by Nexeo are, in the aggregate, objectively economically inferior to those the employees received under the expired Ashland CBA. Nexeo's 401(k) provides demonstrably lower benefits and a higher retirement age than the Local 705 Pension Fund (Tr. 149-157, 185-188, 321, 337-339; G.C. Exh. 16, 43); Nexeo's 401(k) plan requires employees to make contributions to the plan and imposes the risk of market investments on the employees, while the Local 705 Pension Fund is entirely employer-contributed and the employers bear the risk of the Fund investments; Nexeo's health insurance plan requires large employee contributions and higher out-of-pocket costs while the Local 705 Health and Welfare Fund required

no employee contributions and lower out-of-pocket costs (Tr. 184-185, 190-191, 341; G.C. Exh. 38); Nexeo does not offer retiree health insurance, but the Local 705 Health & Welfare Fund does (Tr. 191-193); Nexeo pays only 40 hours per week for vacation while Ashland paid 50 hours per week (ALJD p.18, lines 26-27).

d. Other then the drastically adverse changes to the employees' pension plan, health insurance plan, and vacations, as described above, the rest of Nexeo's proposal, and the implemented terms and conditions of employment were identical to those under Ashland. John Hollinshed told the Union on February 15, 2011 that the rest of the Company's proposal collective bargaining agreement would "mirror the current expired [Ashland] agreement" (Tr. 135), and the Company's subsequent proposals to the Union on March 23, 2011 (G.C.Exh. 18) and March 27, 2011 (G.C.Exh. 20) confirm that. The Company's March 28, 2011 "Package Economic Proposal" explicitly proposed keeping all of the Ashland benefits the same except for a shift into the objectively inferior Nexeo 401(k) plan and Nexeo health insurance (G.C.Exh. 20, p. 2).

43. Local 705 excepts to the ALJ's conclusion that the record does not allow any assessment as to whether the benefit packages the employees received under Nexeo and Ashland, in their entirety, were comparable in the aggregate. (ALJD p.18, lines 9-11.) In support, Local 705 cites the record evidence described in Exception 42, above.

44. Local 705 excepts to the ALJ's conclusion that assessing whether the benefit packages under Nexeo and Ashland were comparable in the aggregate would impermissibly "substitute [the ALJ's] judgment for that of Nexeo or Ashland, the parties who made that agreement." (ALJD p.18, 11-13.) In support, Local 705 cites the record evidence described in Exception 42, above.

45. Local 705 excepts to the ALJ's conclusion that the General Counsel has not established that Nexeo was obligated to first bargain with Local 705 or Local 70 before it offered employment upon the terms it set forth in the offer of employment letters. (ALJD p.18, lines 15-17.)

46. Local 705 excepts to the ALJ's dismissal of the allegations that Nexeo unlawfully moved the employees from the Local 705 Pension Fund and Local 705 Health and Welfare Fund to the Nexeo retirement and health insurance plans. (ALJD p. 18, lines 17-19).

47. Local 705 excepts to the ALJ's failure to find that Nexeo, without notice to Local 705, unilaterally changed the existing overtime practice at the Willow Springs facility on April 1, 2011 from paying overtime after 8 hours in a day to paying overtime only after 40 hours in a week, thereby violating Section 8(a)(5) and (1), as charged in Section VII (d) of the Consolidated Complaint (G.C.Exh. 1(h), ¶ VII (d)). (ALJD p.18, lines 23-34). This appears to be an inadvertent omission, because the ALJ correctly noted elsewhere that Nexeo stipulated that it made that unilateral change on April 1, 2011. (ALJD p.12, lines 20-22, 24; Tr. 67, 181-183, 214-215, 288).

48. Local 705 excepts to the ALJ's dismissal of the allegation that Nexeo unreasonably delayed providing the summary plan description for the 401(k) plan. (ALJD p.18, line 45-p.19, line 4.) As the ALJ correctly found, Local 705 requested the information on February 15, 2011 and it was not provided until July 15, 2011 (ALJD p.18, lines 45-47), even though Nexeo placed employees in the 401(k) plan on April 1, 2011 (ALJD p.12, lines 15-17).

49. Local 705 excepts to the ALJ's failure to conclude in his Conclusions of Law (ALJD p.19) that Nexeo violated Section 8(a)(5) and (1) by unilaterally terminating contributions to the Local 705 Pension Fund and Local 705 Health and Welfare Fund (collectively the "Local 705 Funds") and unilaterally moving employees from those Funds into the Nexeo 401(k) and health

insurance plans, effective April 1, 2011, and his failure to include a remedy for this violation in his proposed Remedy and recommended Order.

50. Local 705 excepts to the ALJ's failure to conclude in his Conclusions of Law (ALJD p.19) that Nexeo violated Section 8(a)(5) and (1) by unilaterally changed the existing overtime practice at the Willow Springs facility from paying overtime after 8 hours in a day to paying overtime only after 40 hours in a week, effective April 1, 2011, and his failure to include a remedy for this violation in his proposed Remedy and recommended Order.

51. Local 705 excepts to the ALJ's failure to conclude in his Conclusions of Law (ALJD p.19) that Nexeo violated Section 8(a)(5) and (1) by unreasonably delaying furnishing Local 705 with a copy of the summary plan description of the Nexeo 401(k) plan, and his failure to include a remedy for this violation in his proposed Remedy and recommended Order.

52. Local 705 excepts to the ALJ's failure to require Nexeo, in the Remedy portion of his decision (pp. 19-20), to resume payment of monthly contributions to the Local 705 Funds on behalf of the Willow Springs bargaining unit employees, make the Local 705 Funds whole for back contributions from April 1, 2011 through the date of compliance, and make affected employees and their covered family members and beneficiaries whole for any and all losses resulting from the cessation of contributions to the Funds.

53. Local 705 excepts to the ALJ's failure to require Nexeo, in the Remedy portion of his decision (pp. 19-20), to restore the previously existing practice of paying Willow Springs bargaining unit employees overtime after 8 hours in a day, and make affected employees whole for any resulting losses from April 1, 2011 through the date of full compliance.

Respectfully submitted,

Thomas D. Allison
N. Elizabeth Reynolds
Jason McGaughy
Attorneys for Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union, Local No. 705, an Affiliate of the International Brotherhood of Teamsters

Allison, Slutsky & Kennedy, P.C.
230 West Monroe Street - Suite 2600
Chicago, IL 60606
(312) 364-9400
allison@ask-attorneys.com

October 18, 2012

CERTIFICATE OF SERVICE

The undersigned counsel for Charging Party Local 705 certifies that he served the foregoing Exceptions of Charging Party Local 705, International Brotherhood of Teamsters, to the Decision and Recommended Order of Administrative Law Judge William G. Kocol on the following counsel of record by e-mail on October 18, 2012:

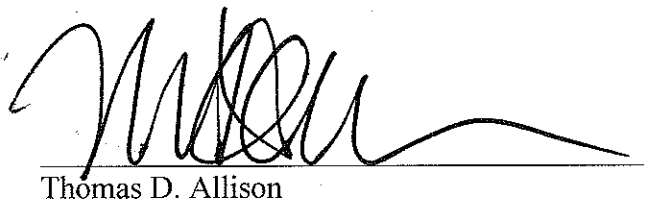
J. Edward Castillo, Esq.
R. Jason Patterson, Esq.
National Labor Relations Board, Region 13
200 S. LaSalle Street, Suite 900
Chicago, IL 60604

Richard J. McPalmer, Esq.
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103

David A. Kadela, Esq.
Littler Mendelson, P.C.
21 E. State Street, Suite 1600
Columbus, OH 43125

Adam C. Wit, Esq.
Littler Mendelson, P.C.
321 N. Clark Street, Suite 1000
Chicago, IL 60604

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld, P.C.
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501



Thomas D. Allison