

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

NEXEO SOLUTIONS, LLC,

Respondent,

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

Charging Parties.

Cases 13-CA-46694
13-CA-62072
20-CA-35519

**RESPONDENT NEXEO SOLUTIONS, LLC'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION AND RECOMMENDED ORDER**

David A. Kadela
Littler Mendelson, P.C.
21 East State Street, Suite 1600
Columbus, Ohio 43215
Telephone: 614.463.4201
Facsimile: 614.221.3301
Email: dkadela@littler.com

*Attorney for Respondent
Nexeo Solutions, LLC*

Dated: October 18, 2012

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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	:	
	:	
Charging Parties.	:	

**RESPONDENT NEXEO SOLUTIONS, LLC’S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE’S DECISION AND RECOMMENDED ORDER**

Pursuant to Section 102.46 of the National Labor Relations Board’s Rules and Regulations, Respondent Nexeo Solutions, LLC hereby submits the following exceptions to the decision and recommended order issued in these cases by Administrative Law Judge William G. Kocol on August 30, 2012.¹

1. Nexeo excepts to the ALJ’s finding that the closing on the Company’s purchase

¹ Respondent Nexeo Solutions, LLC is referred to herein as “Nexeo” or the “Company”; Charging Party Truck Drivers, Oil Drivers, Filling Station and Platform Workers’ Union, Local No. 705, is referred to as “Local 705”; Charging Party Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70 of Alameda County, is referred to as “Local 70”; the Administrative Law Judge is referred to as the “ALJ”; and references to the ALJ’s decision and recommended order are abbreviated “ALJD p. ___.”

of the assets of Ashland Distribution occurred on April 1, 2011. (ALJD pp. 2, 5) (Tr. 451)²

2. Nexeo excepts to the ALJ's finding that the Agreement of Purchase and Sale ("APS") between Ashland, Inc. ("Ashland") and the Company "required Nexeo to offer employment to all Nexeo employees in the same position, same base wage rate, and benefits comparable in the aggregate to Ashland's." (ALJD p. 2) (GCX 6)

3. Nexeo excepts to the ALJ's finding that a schedule attached to the APS obligated the Company to retain the individuals whose names were listed on it. (ALJD p. 5) (GCX 6)

4. Nexeo excepts to the ALJ's finding that documents from Ashland, which were shared with the Company, reveal that "Nexeo made every effort consistent with the APS to retain the existing work forces as part of the transition from Ashland." (ALJD p. 5)

5. Nexeo excepts to the ALJ's finding that "communications made by Ashland concerning the sale closely track the communications made by Nexeo itself." (ALJD p. 6)

6. Nexeo excepts to the ALJ's finding that Nexeo's 401(k) plan required employee contributions. (ALJD p. 7) (GCX 32)

7. Nexeo excepts to the ALJ's failure to identify as relevant to the assessment whether the Company is a perfectly clear successor of Ashland various provisions of the APS, including Sections 1.1 (definition of "Employee Benefit Plan"), 2.2(e), 7.5(g), and 7.5(s), and Schedule 7.5(d). (ALJD pp. 3-5) (GCX 6)

8. Nexeo excepts to the ALJ's failure to find that a majority of Local 705-represented employees initially rejected the Company's offer of employment by striking language from their offer letter and that Nexeo resent them offer letters, which they signed "under protest." (ALJD p. 10) (Tr. 140-43, 442-45; GCX 12-13)

² References to the transcript of the hearing are abbreviated, "Tr. ___"; references to the General Counsel's exhibits are abbreviated, "GCX ___"; references to the Company's exhibits are abbreviated, "REX ___"; and references to joint exhibits are abbreviated, "JEX ___."

9. Nexeo excepts to the ALJ's crediting the testimony of Neil Messino over that of John Hollinshead, to the extent there were differences in their testimony. (ALJD p. 12)

10. Nexeo excepts to the ALJ's finding that the complaint in the Region 20 case alleges that the Company violated Section 8(a)(5) by "no longer covering employees under Local 705's health and welfare fund but instead placing them in Nexeo's health insurance plan." (ALJD p. 13)

11. Nexeo excepts to the ALJ's finding that the offer letter shown to Charging Party Teamsters Local 70 ("Local 70") at the meeting on February 16, 2011, was identical to the letter that the Company gave to Local 705. (ALJD p. 13) (GCX 12-13; REX 30)

12. Nexeo excepts to the ALJ's failure to credit the testimony of Paul Fusco to the effect that the main obstacle that prevented an agreement between the Company and Local 70 was each side's insistence that the other agree to the retirement plan it had proposed. (ALJD p. 14, n. 11)

13. Nexeo excepts to the finding of the ALJ that, as Ashland employees, the Local 70-represented employees participated in a health insurance fund sponsored or maintained by Local 70. (ALJD p. 14) (GCX 77)

14. Nexeo excepts to the ALJ's finding that, on April 4, 2011, "Nexeo assigned routes to [Local 70-represented] drivers based on the same seniority-based systems that had been used by Ashland." (ALJD p. 14) (GCX 100)

15. Nexeo excepts to the ALJ's finding that the Company never informed Local 70 of its intent to change from a seniority-based dispatch system to one based upon efficiency. (ALJD p. 14) (Tr. 997; REX 38)

16. Nexeo excepts to the ALJ's finding that the Company did not change from a

seniority-based dispatch system at its Fairfield facility to one based upon efficiency until April 5, 2011. (ALJD p. 14) (Tr. 997; GCX 100; REX 38)

17. Nexeo excepts to the ALJ's findings that "it was perfectly clear . . . that Nexeo planned to retain all the employees in both units" and that "Nexeo committed itself to do so in the APS." (ALJD p. 15) (GCX 6, 27)

18. Nexeo excepts to the ALJ's finding that this case does not involve a situation where it was not clear that the Company had a duty to bargain with Local 70 and Local 705 until it had hired a full complement of employees. (ALJD p. 15)

19. Nexeo excepts to the ALJ's finding that there was "little doubt that a majority, if not all, of the employees" would "accept employment at Nexeo." (ALJD p. 15) (Tr. 140-43, 442-45; GCX 6, 12-13)

20. Nexeo excepts to the ALJ's using the Board's description of the nature and purpose of the employer's conduct in *Road & Rail Services*, 348 NLRB 1160 (2006), to describe the nature and purpose of the Company's conduct. (ALJD pp. 15-16)

21. Nexeo excepts to the ALJ's finding that the fact pattern in *Spruce Up Corp.*, 209 NLRB 194, (1974), *enforced*, 529 F.2d 516 (4th Cir. 1975), "does not cover the fact pattern in this case." (ALJD p. 16)

22. Nexeo excepts to the ALJ's finding that the Company could have been a perfectly clear successor if, without adding a more detailed explanation, it had only told employees that they would receive benefits that were substantially equivalent or comparable. (ALJD pp. 17-18)

23. Nexeo excepts to the ALJ's finding that the Company eliminated the daily guarantee of eight hours' pay and the weekly guarantee of 40 hours' pay, and the entitlement to 50 hours' pay for each week of vacation, that Local 705-represented employees had as Ashland

employees without providing Local 705 notice of and an opportunity to bargain over those matters. (ALJD p. 18) (GCX 12-13, 20)

24. Nexeo excepts to the ALJ's finding that the Company did not offer a defense to the claim that it unlawfully eliminated the Local 705-represented employees' daily and weekly guarantees and 50-hour vacation pay entitlement. (ALJD p. 18) (GCX 12-13, 20)

25. Nexeo excepts to the ALJ's finding that the Company's letter offering employment to Local 705-represented employees did not provide for elimination of the daily and weekly guarantees and 50-hour vacation pay entitlement. (ALJD p. 18) (GCX 12-13)

26. Nexeo excepts to the ALJ's finding that the Company violated Sections 8(a)(1) and (5) by unilaterally eliminating guarantees Local 705-represented employees previously had of eight hours' pay for each day worked and 40 hours' pay for each week worked, and by reducing employees' vacation pay from 50 hours to 40 hours for each week of vacation taken. (ALJD p. 18)

27. Nexeo excepts to the ALJ's finding that, at its Fairfield facility, the Company abandoned the practice of using seniority to assign driving routes and the practice of using seniority to allocate unpaid lay-off days without providing Local 70 notice of and an opportunity to bargain over the changes. (ALJD p. 18) (Tr. 979-997; REX 32-38)

28. Nexeo excepts to the ALJ's finding that the Company violated Sections 8(a)(1) and (5) by unilaterally abandoning the practice of using seniority to assign driving routes and the practice of using seniority to allocate unpaid lay-off days. (ALJD p. 18)

29. Nexeo excepts to the ALJ's failure to find that the Company satisfied any duty it could be found to have had to consult or bargain with both Local 70 or Local 705 prior to implementing the employment terms that he found it implemented in violation of Sections

8(a)(1) and (5). (ALJD p. 18) (Tr. 149-76, 458-68, 979-997; GCX 16-21; REX 32-38)

30. Nexeo excepts to the ALJ's finding that the Company had a legal obligation to provide Local 705 with a copy of the summary plan description of Nexeo's healthcare plan prior to April 1, 2011. (ALJD p. 19) (GCX 1(h))

31. Nexeo excepts to the ALJ's finding that the Company had a legal obligation to provide Local 705 with a copy of the summary plan description of Nexeo's healthcare plan and the plan document for Nexeo's 401(k) plan after Local 705 decided to suspend collective bargaining negotiations after June 1, 2011. (ALJD p. 19) (Tr. 272)

32. Nexeo excepts to the ALJ's finding that the Company violated Sections 8(a)(1) and (5) by unreasonably delaying providing Local 705 with a copy of the summary plan description of its healthcare plan. (ALJD p. 19) (REX 22-28)

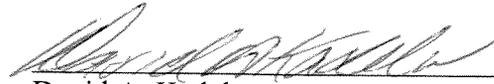
33. Nexeo excepts to the ALJ's finding that the confusion whether Local 705 had requested a copy of the summary plan description of Nexeo's 401(k) plan or a copy of the plan document of the 401(k) plan should have been cleared-up a week or so after Local 705 made its information request on May 25, 2011. (ALJD p. 19) (REX 22-28)

34. Nexeo excepts to the ALJ's finding that the Company violated Sections 8(a)(1) and (5) by unreasonably delaying providing Local 705 with a copy of the plan document of its 401(k) plan. (ALJD p. 19)

35. Nexeo excepts to the ALJ's recommended remedy. (ALJD p. 19)

36. Nexeo excepts to the ALJ's recommended order, with the exception of that portion of it providing that the complaint be dismissed insofar as it alleges violations of the Act not specifically found. (ALJD p. 20)

Respectfully submitted,



David A. Kadela
Littler Mendelson, P.C.
21 East State Street, Suite 1600
Columbus, Ohio 43215
Telephone: 614.463.4201
Facsimile: 614.221.3301
Email: dkadela@littler.com

*Attorney for Respondent
Nexeo Solutions, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October 2012, I served the foregoing Exceptions upon the following via email:

J. Edward Castillo, Esq.
National Labor Relations Board – Region 13
209 South Lasalle Street, Suite 900
Chicago, Illinois 60604
Counsel for the General Counsel

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

Thomas D. Allison, Esq.
N. Elizabeth Reynolds, Esq.
Allison, Slutsky & Kennedy, P.C.
230 West Monroe Street, Suite 2600
Chicago, Illinois 60606
Attorney for Charging Party IBT Local 705

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld, P.C.
1001 Marina VLG Parkway, Suite 200
Alameda, CA 94501-6430
Attorney for Charging Party IBT Local 70



David A. Kadela