

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEW NGC, INC., d/b/a NATIONAL  
GYPSUM COMPANY

and

Case 25-CA-031825

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION  
(USW), AFL-CIO, CLC

and

Cases 25-CA-031898  
25-CA-065321

UNITED STEELWORKERS LOCAL UNION NO. 7-0354,  
a/w UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY, ALLIED  
INDUSTRIAL AND SERVICE WORKERS  
INTERNATIONAL UNION (USW), AFL-CIO, CLC

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

Comes now Counsel for the Acting General Counsel and, for the reasons set forth in the Acting General Counsel's Brief in Support of Exceptions, respectfully excepts to the decision of the Administrative Law Judge issued in this matter on September 7, 2012.

• Exception 1

The Acting General Counsel excepts to the Judge's finding on page 2, lines 25-28, that the preponderance of the evidence does not support the remaining allegations.

• Exception 2

The Acting General Counsel excepts to the Judge's finding on page 26, line 31, that the Company has the better argument.

- Exception 3

The Acting General Counsel excepts to the Judge's finding on page 26, footnote 28 (continued), that the parties had previously reached agreement on a proposal on March 28 instead of October 24.

- Exception 4

The Acting General Counsel excepts to the Judge's finding on page 27, lines 27-28, that there was no reasonable basis for the Union to believe that continued bargaining would have been fruitful.

- Exception 5

The Acting General Counsel excepts to the Judge's finding on page 27, lines 28-31, that the Union did not believe that continuing bargaining would have been fruitful and that Bolte's statements to the contrary were an "empty offer."

- Exception 6

The Acting General Counsel excepts to the Judge's finding on page 27, footnote 32, distinguishing various Board cases which rely on recent progress and/or similar union statements in reaching a contrary conclusion.

- Exception 7

The Acting General Counsel excepts to the Judge's finding on page 28, lines 6-10, that the Union's October 24 counterproposal is irrelevant to analyzing the unfair labor practice allegations.

- Exception 8

The Acting General Counsel excepts to the Judge's finding on page 28, lines 10-12, that the evidence concerning the Union's October 24 counterproposal supports the Company's, rather than the General Counsel's, position.

- Exception 9

The Acting General Counsel excepts to the Judge's finding on page 28, lines 14-16, that May's statements linking impasse to a revote support a finding of impasse.

- Exception 10

The Acting General Counsel excepts to the Judge's finding on page 29, lines 19-21, that May's statements linking impasse to a revote were because the Company believed that a revote at that time would break the deadlock and result in a contract.

- Exception 11

The Acting General Counsel excepts to the Judge's finding on page 29, lines 23-24, that there is no substantial basis in the record to conclude that anything but a favorable second ratification vote would have broken the deadlock.

- Exception 12

The Acting General Counsel excepts to the Judge's finding on page 29, lines 26-27, that there was no reason to think that the Company would have modified its defined contribution and 401(k) proposals if the LBFO was voted down again in September.

- Exception 13

The Acting General Counsel excepts to the Judge's finding on page 29, lines 32-37, that May's statements were intended to describe a reality that the only way to reach an agreement and end the impasse was for the employees to revote in favor of the LBFO.

- Exception 14

The Acting General Counsel excepts to the Judge's finding on page 29, lines 39-41, that the preponderance of the evidence establishes that the parties reached a genuine impasse at the September 2 session.

- Exception 15

The Acting General Counsel excepts to the Judge's finding on page 30, footnote 35 (continued), that he would reach the same conclusion, and dismiss both allegations, regardless of whether the Company or the General Counsel had the burden of proof.

- Exception 16

The Acting General Counsel excepts to the Judge's finding on page 30, line 14, that the allegation concerning the Company's refusal to continue bargaining and insistence to impasse on a nonmandatory subject of bargaining (ratification) fails.

- Exception 17

The Acting General Counsel excepts to the Judge's finding on page 30, lines 14-16, that the parties had reached a bona fide impasse at the time May made his statements linking impasse to another ratification vote.

- Exception 18

The Acting General Counsel excepts to the Judge's finding on page 30, lines 16-20, that May's statements reflect what was patently true at that point, that the only way to reach a new agreement was for the employees to revote in favor of the Company's LBFO.

- Exception 19

The Acting General Counsel excepts to the Judge's finding on page 30, lines 22-25, that May did not insist to impasse on a ratification vote, that an impasse already existed, and therefore dismissing the allegation.

- Exception 20

The Acting General Counsel excepts to the Judge's finding on page 30, footnote 36, distinguishing the cases cited by the General Counsel.

- Exception 21

The Acting General Counsel excepts to the Judge's finding on page 30, footnote 37, dismissing the allegation that the Company insisted on a revote as a condition of reaching an agreement and ending the impasse in violation of Section 8(a)(5).

- Exception 22

The Acting General Counsel excepts to the Judge's finding on page 31, lines 5-7, dismissing the allegation that the Company's lockout violated Section 8(a)(5) and (3) because the Company's positions regarding impasse and ratification were not unlawful.

- Exception 23

The Acting General Counsel excepts to the Judge's finding on page 31, lines 22-23, that the Company did not otherwise violate Section 8(a)(5), (3), and (1) of the Act as alleged in the consolidated complaint, and his concomitant failure to provide an appropriate remedy for those violations.

SIGNED at Indianapolis, Indiana, this 5<sup>th</sup> day of November 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Derek A. Johnson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Acting General Counsel's Exceptions to the Administrative Law Judge's Decision has been filed electronically with the Office of the Executive Secretary through the Board's E-Filing System this 5<sup>th</sup> day of November 2012. Copies of said filing are being served upon the following persons by electronic mail:

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