

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

**SILGAN PLASTICS CORPORATION**

**and**

**Cases: 25-CA-031870  
25-CA-063058  
25-CA-065281  
25-CA-068529  
25-CA-072644  
25-CA-074946  
JD-50-12**

**LOCAL UNION 822, a/w UNITED STEEL  
WORKERS, AFL-CIO-CLC**

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**RESPONDENT SILGAN PLASTICS CORPORATION'S  
STATEMENT OF EXCEPTIONS**

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Respondent Silgan Plastics Corporation (“Silgan” or “Respondent”) by and through its attorneys, Sherman & Howard L.L.C., pursuant to the National Labor Relations Board (“NLRB” or “Board”) Rules and Regulations § 102.46, hereby takes the following exceptions to the Decision, Conclusions, Remedy, and Recommended Order of the Administrative Law Judge Bogas:

1. The Administrative Law Judge’s finding that United Steelworkers (International) Staff Representative Chris Bolte’s (“Bolte”) March 5, 2011<sup>1</sup> letter to former Plant Manager Jim Stajkowski (“Stajkowski”) stated that any proposed changes to the terms and conditions of employment needed to be processed directly by Bolte. (ALJD 4: 4-5; J. Ex. 2; Tr. 148: 16-23).<sup>2</sup>

2. The Administrative Law Judge’s failure to find that Bolte’s March 5 letter to Jim Stajkowski established him as the direct contact only for bargaining the new collective bargaining agreement and was a unilateral modification of the status quo. (ALJD 4: 4-10; J. Ex. 2; Tr. 148: 16-23).

3. The Administrative Law Judge’s finding that Union Vice President and Steward, Will Coffman (“Coffman”) did not know that a grievance had been filed in response to employee Eric Wagner’s (“Wagner”) request for bereavement leave when he talked to Regional Human Resources Manager Deanna Lawyer (“Lawyer”) about Wagner’s request. (ALJD 5: 11-13; Tr. 158: 13-20).

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<sup>1</sup> All dates are “2011” unless otherwise indicated.

<sup>2</sup>Citations in this Statement of Exceptions will be as follows: “Tr. \_\_\_:\_\_\_” to indicate the hearing transcript’s page and line numbers; “J Ex. \_\_\_” to indicate a Joint Exhibit; “R Ex. \_\_\_” to indicate Respondent’s Exhibits; “GC Ex. \_\_\_” to indicate an Exhibit of the General Counsel; and “ALJD \_\_\_:\_\_\_” to indicate the page and line numbers of the Decision of the Administrative Law Judge.

4. The Administrative Law Judge's finding and conclusion that Coffman did not resolve the grievance filed on Wagner's behalf but only reached an "arrangement" with the Respondent. (ALJD 5: 17-22; ALJD 20: 38-42; ALJD 21: 1-10; Tr. 158: 13-20).

5. The Administrative Law Judge's finding that the local Union lost the authority to resolve grievances and that the entire grievance process was relegated to Bolte. (ALJD 5: 28-31; GC Ex. 8; Tr. 148: 16-23).

6. The Administrative Law Judge's finding that the July 29 information request was filed within the grievance filing period for former employee Lisa Duncan ("Duncan"), who was terminated on July 11. (ALJD 12: 41-45; ALJD 23: 12-18; J Ex. 1, at 6).

7. The Administrative Law Judge's failure to find that the Union (herein, USW and the Local referred together as "Union") failed to appeal Oliver Marshall Hudson's ("Hudson") grievance to step 2 of the grievance and arbitration procedure when determining that the July 29 information request was timely. (ALJD 6: 26-31; ALJD 12: 41-45).

8. The Administrative Law Judge's failure to allow Respondent to introduce evidence of the Union's bad faith because he determined, prior to the introduction of the evidence and the case in chief of Respondent, that the Union had "justified" reason(s) for the four requests for information it filed with Respondent. (ALJD 15: 31-43; Tr. 187-198; Tr. 219-221).

9. The Administrative Law Judge's finding that Respondent did not inform the Union about the health care benefit changes prior to implementation. (ALJD 16: 39-40).

10. The Administrative Law Judge's failure to find that the reason the Union and Respondent did not meet to discuss the health benefits until December 22 was because Bolte

refused to meet prior to that date. (ALJD 17: 11-13; Tr. 250: 16-25; Tr. 251: 1-18; Tr. 378: 23-25; Tr. 379: 1-4).

11. The Administrative Law Judge's failure to find that the Union did not request to meet after December 22. (ALJD 17: 11-33).

12. The Administrative Law Judge's finding that Respondent implemented changes to the health benefits on January 1, 2012. (ALJD 17: 34-36).

13. The Administrative Law Judge's finding that Director of Human Resources for Silgan Containers Corporation David Rubardt's ("Rubardt") failure to use the word "impasse" establishes that there was no impasse. (ALJD 17: 38-39; ALJD 18: 1-5; ALJD 33: 19-28; Tr. 365: 4-11).

14. The Administrative Law Judge's finding that because Rubardt testified that Respondent and the Union did not need to bargain over the status quo, there was no impasse. (ALJD 18: 2-5).

15. The Administrative Law Judge's exclusion of Rubardt's testimony concerning the mediator's statement that the parties were at impasse. (ALJD 18: 29-37; Tr. 365: 4-11).

16. The Administrative Law Judge's finding that impasse could not have been reached because the Respondent and the Union met on December 22 during which the mediator did not state that the Parties were at impasse. (ALJD 18: 35-38).

17. The Administrative Law Judge's finding that all employees were required to wear vests. (ALJD 19: 1-5; Tr. 86: 1-3).

18. The Administrative Law Judge's finding that whether Respondent bargained safety measures in the past is relevant to determining whether bargaining the use of safety equipment under Respondent's Policy is required. (ALJD 19: 14-18).

19. The Administrative Law Judge's finding that the information requested concerning Wagner would "assist the Union in its decisions regarding the grievance/arbitration process and its policing of the Respondent's adherence to the status quo under the expired contract." (ALJD 20: 33-25; ALJD 21: 12-16; ALJD 21: 21-29; Tr. 158: 13-20; Tr. 233: 12-20; Tr. 234: 2-14; Tr. 275: 1-10; GC Ex. 31).

20. The Administrative Law Judge's finding that the May 16 conversation that Respondent had with the Union was a "proposal to grant funeral leave as long as Wagner showed that he attended a memorial service." (ALJD 20: 35-37; ALJD 21: 5-10; ALJD 21: 15-16; J Ex. 1, at 21).

21. The Administrative Law Judge's finding that the Union needed the information requested concerning Wagner's leave for "policing of the Respondent's adherence to the status quo under the expired contract." (ALJD 20: 35-37; ALJD 21: 12-16; Tr. 275: 1-10).

22. The Administrative Law Judge's failure to find Bolte's bad faith refusal to discuss with Respondent about the information request made concerning Wagner and his decision to let the NLRB to handle his request. (ALJD 21: 18-25; ALJD 21: 45-48; Tr. 363: 7-15; Ex. 1(a); J Ex. 8).

23. The Administrative Law Judge's failure to find that Bolte refused to discuss his request for information concerning Wagner and instead filed a charge about two weeks after making the initial request for information. (ALJD 21: 18-30; Tr. 363: 7-15; Ex. 1(a); J Ex. 8).

24. The Administrative Law Judge's failure to find that the Union made the information requests in bad faith because "an inquiry into the Union's alleged bad faith is not warranted." (ALJD 21: 18-25; ALJD 23: 28-30).

25. The Administrative Law Judge's ruling that Respondent could not question the Union concerning its bad faith because Respondent did not show that its questioning "was more than a fishing expedition." (ALJD 15: 32-47; ALJD 21: 32-47).

26. The Administrative Law Judge's finding that Respondent "initially resisted providing the information" requested by Bolte concerning Wagner. (ALJD 22: 1-5; J Ex. 5; J. Ex. 7; J. Ex.9).

27. The Administrative Law Judge's conclusion that the production of information concerning Wagner was "untimely and that the Respondent therefore violated its obligations under Section 8(a)(5) and (1) to produce requested information without undue delay." (ALJD 22: 2-4).

28. The Administrative Law Judge's conclusion that the information requested "could readily have been provided within a matter of days." (ALJD 22: 9-20).

29. The Administrative Law Judge's finding that "management officials expressed bewilderment at the Union's request for information regarding Wagner," but concluding that "there is no doubt in my mind that the Respondent understood exactly what the Union was asking for and why it was asking for it." (ALJD 5: 26-28; ALJD 22: 31-32; J Ex. 5, J Ex 6, J Ex. 7, J Ex 8, J Ex. 9).

30. The Administrative Law Judge's conclusion that the information requested related to Duncan was relevant to bargain over Duncan's termination and to determine whether the Respondent was adhering to the status quo. (ALJD 23: 17-23; J. Ex. 1, at 6).

31. The Administrative Law Judge's conclusion that a four-month delay in providing the information requested by the Union concerning Duncan constituted an unreasonable delay. (ALJD 23: 44-46).

32. The Administrative Law Judge's finding that the information provided in response to the request for information for Duncan could have been provided "within a few days" and the delay was unreasonable. (ALJD 23: 38-41).

33. The Administrative Law Judge's finding that the information related to Duncan was not provided in a timely manner and that the Respondent therefore violated Section 8(a)(5) and 8(a)(1). (ALJD 23: 31-33; ALJD 24: 7-10).

34. The Administrative Law Judge's conclusion that the request for information related to Hudson was "relevant and necessary to the Union's decisions regarding the grievance process and to policing the Respondent's adherence to the status quo under the expired contract." (ALJD 24: 18-23; Tr. 327: 12-15; J Ex. 1, at 21).

35. The Administrative Law Judge's finding that the Union needed the information requested concerning Hudson's leave for "policing of the Respondent's adherence to the status quo under the expired contract." (ALJD 24: 19-23; ALJD 25: 25-28; Tr. 327: 12-15; J Ex. 1, at 21).

36. The Administrative Law Judge's finding that the information requested related to Hudson lacked complexity and could have been provided "within a matter of days" and that the Respondent therefore violated Section 8(a)(5) and 8(a)(1). (ALJD 24: 26-29; ALJD 25: 4-6).

37. The Administrative Law Judge's finding that providing the information requested related to Jonathon Coe ("Coe") two months after the request was made was an undue delay. (ALJD 25: 1-5).

38. The Administrative Law Judge's conclusion that "The Respondent's representatives certainly muddied matters by taking the position that they were not obligated to bargain over discipline at the same time that they were offering to do so, and by giving confused signals about which representative of the Respondent the Union should approach about a resolution." (ALJD 26: 32-34; GC Ex. 12; J Ex. 13).

39. The Administrative Law Judge's conclusion that Respondent's existing Plant Safety, Security and Administrative Policy ("Policy") did not allow Respondent to implement the vest requirement. (ALJD 30: 8-18; R Ex. 43).

40. The Administrative Law Judge's finding that because the reflective vest requirement could result in discipline, the requirement was a "material, substantial, and significant change." (ALJD 29: 31-34).

41. The Administrative Law Judge's finding that the failure to implement reflective vests in the Policy earlier shows that Respondent could not implement the requirement in 2012 even though the Policy states that "special safety equipment" may be required. (ALJD 30: 15-18).

42. The Administrative Law Judge's conclusion that Respondent violated Section 8(a)(5) and 8(a)(1) by "unilaterally implementing" the reflective vest requirement. (ALJD 30: 32-35).

43. The Administrative Law Judge's finding that Respondent contends that the past practice as it relates to health benefits consisted of unilaterally making changes to the health benefits and premiums of the unit employees and implementing those changes. (ALJD 31: 19-21; Tr. 401: 5-8; J Ex. 1, at 22).

44. The Administrative Law Judge's disregard for the Parties' established practice of annually holding open enrollment and offering corporate-wide plan changes for all of its employees. (ALJD 31: 10-47; Tr. 401: 5-8; J Ex. 1, at 22).

45. The Administrative Law Judge's disregard for established Board law and conclusion that the status quo, established through past practice between the Parties, is not contingent on whether the management rights clause is effective. (ALJD 31: 23-41).

46. The Administrative Law Judge's conclusion that Respondent's unilateral changes to health care benefits were implemented under a contractual management rights provision instead of a free-standing past practice between the parties. (ALJD 32: 2-5).

47. The Administrative Law Judge's reliance on an unprecedented and inapplicable policy consideration that "unions would be discouraged from ever granting special discretion to employers during a contract's term, if doing so meant that employers who exercised that contractual discretion would thereby acquire the discretion in perpetuity – even if the contractual grant of discretion expired and the parties did not agree to renew it in subsequent contracts." (ALJD 32: 20-25; ALJD 33: 1-4).

48. The Administrative Law Judge's finding that the Respondent's defense that the Parties were at impasse in regards to bargaining over health care was an "after-the-fact invention of trial counsel." (ALJD 33: 16-20).

49. The Administrative Law Judge's finding that impasse could not have been reached because Respondent also contended that implementing the changes was consistent with past practice. (ALJD 33: 24-28).

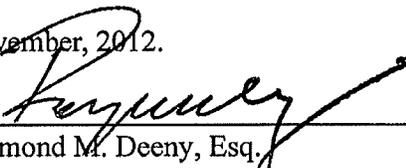
50. The Administrative Law Judge's failure to find that even though the Parties continued to meet after impasse was reached, the Union's position did not change and no new proposals were made. (ALJD 34: 5-30; Tr. 252: 19-22; Tr. 355: 13-16; Tr. 380: 16-23; R Ex. 54).

51. The Administrative Law Judge's finding that Respondent contends an impasse was reached because the Parties took longer negotiating than had been the case in Respondent's experience because Rubardt and Bolte were new to the negotiations at the Seymour facility. (ALJD 34: 31-37).

52. The Administrative Law Judge's conclusion that the Parties could not reach impasse because the proposals did not include the specific annual open enrollment changes that were implemented. (ALJD 34: 38-50; J Ex. 1, at 22).

53. The Administrative Law Judge's conclusion that Respondent violated Section 8(a)(5) by implementing the annual open enrollment changes to the employees' health benefits plans for all employees covered by the plan, the dynamic status quo. (ALJD 35: 5-10).

Respectfully submitted this 8<sup>th</sup> day of November, 2012.

  
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**CERTIFICATE OF MAILING**

I hereby certify that on November 8, 2012, a true and correct copy of the foregoing **RESPONDENT SILGAN PLASTIC CORPORATION'S STATEMENT OF EXCEPTIONS** was sent in the manner indicated, postage prepaid, addressed to the following:

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