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5 Attorneys for Charging Party/Union,
6 TEAMSTERS LOCAL UNION NO. 890,

7 UNITED STATES OF AMERICA
8 NATIONAL LABOR RELATIONS BOARD
9 REGION 32

10 TEAMSTERS LOCAL UNION NO. 890,
11 INTERNATIONAL BROTHERHOOD OF
12 TEAMSTERS.

No. 32-CA-078166

13 Charging Party/Union,

14 and

15 BUD ANTLE, INC. ,

16 Respondent/Employer.

BRIEF OF CHARGING PARTY

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18 In this Brief, the Charging Party addresses some additional remedies which it suggests
19 would be appropriate for this and other similar cases:

20 1. The normal Board posting procedure requires that the Notice be physically
21 (or recently electronically) posted for 60 days. That remedy is antiquated, irrelevant and largely
22 ineffectual. In its place the Charging Party requests a remedy by which the employer will post
23 the notice for the period of time from when the complaint issued until the employer posts the
24 required Board Notice.

25 Extending the posting period under this formulation would be a substantial disincentive on
26 the part of Respondents to delay Board proceedings. The longer they delay the posting, the
27 longer the subsequent posting period. That makes simple sense.

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1 The extension of the posting period is even more appropriate given the fact that the longer
2 the Respondent delays the notice posting, the less impact it will have upon those employees who
3 suffered because of the unlawful conduct. If this employer posts the notice a year or two after the
4 unlawful conduct, fewer employees who were subject to the adverse consequences of the
5 unlawful conduct will know about the remedial provisions. To have the Notice posted for a
6 lengthier time will advise more employees who like their predecessors were employees of the
7 employer.

8 The present Board Notice posting formula of 60 days actually encourages delay. It
9 encourages delay because Respondents know that ultimately the posting will be for a limited
10 period of time and will likely be seen in most regards by employees who know nothing about the
11 unlawful conduct.

12 For these reasons the notice posting period should be extended as suggested.

13 2. The employer should be required to toll the time limits for filing any grievances over
14 the conduct involving the information requests until the information has been fully provided.
15 Most collective bargaining agreements including the one involved in this case provide for time
16 limits for filing grievances. Many contracts also contain time limits for the processing of such
17 grievances. An appropriate remedy is to toll the period of time for the filing or processing of
18 grievances until the information is fully provided. Otherwise the employer will have the
19 advantage of having delayed providing the information and then will assert time limits to the
20 filing of grievances.

21 This tolling procedure is common to civil procedure in both state and federal courts.
22 Tolling procedures apply to administrative claims, contractual claims and many other
23 circumstances. There is no reason why the Board should not impose a tolling remedy when an
24 employer fails and refuses to provide information relevant to the administration of a collective
25 bargaining agreement.

26 3. The employees of this employer are spread out over various facilities at different
27 times of the year. Notice posting in a physical location is inadequate. The employer should be

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1 required to mail the appropriate notice to all employees who have worked for the company from
2 the time the unfair labor practices begin until the notices are mailed.

3 4. Mailing the notice alone is inadequate. Employees have no idea why the notice is
4 being sent to them. Any mailing should also include a copy of any Decision of the
5 Administrative Law Judge or the Board so as to explain the reason for the notice.

6 5. Once of the facets of this contract is the “reading of the seniority list.” This occurs
7 before the start of each season at a location determined by the employer. This is the way the
8 employer determines who is returning for the particular season. At the same time as the “reading
9 of the seniority list” the Board Notice should be read to the employees.

10 6. Electronic notice posting should be required in this case. We recognize given the
11 nature of the workforce, not all employees will have access to the intranet. Nonetheless this
12 should be a standard Board remedy.

13 7. Another aspect of appropriate notice posting would be to require that the notice be
14 emailed to all employees at any email address accessible to the employer. The email should
15 include both the notice as well as the Decision of the Administrative Law Judge or the Board as
16 appropriate.

17 8. The normal language in the Board notice about “refraining” from protected
18 concerted activity should be deleted. This is a case involving employer misconduct and there is
19 no suggestion that section 8(b)(1)(A) is involved. For that reason the language about the right to
20 “refrain” should not be included in the standard Board Notice.

21 **CONCLUSION**

22 For reasons suggested above, the Administrative Law Judge should issue the appropriate
23 Decision. In addition the remedies suggested above should be included.

24 Dated: December 18, 2012

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**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On December 18, 2012, I served the following documents in the manner described below:

BRIEF OF CHARGING PARTY

- 9 X (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- 10
11 X (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

12
13
14 On the following part(ies) in this action:

15 Mr. David N. Buffington
16 Director of Labor and Employment
17 Dole Food Company, Inc.
18 One Dole Drive
Westlake Village, CA 91362-7300
david.buffington@dole.com

Ms. Gabriela Alvaro Esq.
National Labor Relations Board, Region 32
1301 Clay Street, Room 300N
Oakland, CA 94612-5211

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct. Executed on December 18, 2012, at Alameda, California.

21 /s/ Katrina Shaw
22 Katrina Shaw