

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

DOUGLAS AUTOTECH CORPORATION,

Respondent,

and

Case No. GR-7-CA-51428  
Hon. Paul Buxbaum

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA (UAW), AFL-CIO, AND ITS  
LOCAL 822,

Charging Union.

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**CHARGING PARTY'S CROSS EXCEPTIONS TO THE  
DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Charging Party UAW and its Local 822 (hereinafter Union) cross-excepts to the ALJ's failure to find that the Company repudiated its collective bargaining relationship with the Union on August 14, 2008. (JD p. 38, l. 45-47; p. 39, l. 1-29)<sup>1</sup> The ALJ did correctly find that beginning August 14, 2008 the Company failed and refused to bargain with the Union. But the ALJ dismissed the Complaint allegation that the Company repudiated the collective bargaining relationship on the grounds that: (1) the Company said it would discuss "effects" after it fired the entire bargaining unit; and (2) on August 25, 2008 attorney Cohen responded in writing to a few Union inquiries. (JD p. 38-39) Among other things, Cohen wrote that the replacements were "temps."

The existence of a bargaining unit is a prerequisite to a collective bargaining relationship. Here, the Company admittedly eliminated the unit.

- "The entire bargaining unit has been discharged." (CP Ex. 4)
- "Douglas terminated the bargaining unit August 4, 2008." (GC Ex. 51)

The Company made sure it had no bargaining relationship by hiring temporary replacements who are not in a bargaining unit. *Harter II*, 294 NLRB 647, 648 (1993), *Goldsmith Motors Corp.*, 310 NLRB 1279, fn. 5 ("replacements for locked-out employees are not in the bargaining unit.") As a legal matter, terminating the unit *is* repudiating the bargaining relationship. As a practical matter, terminating the bargaining unit is a "death blow to" the bargaining relationship. See e.g., *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063 (1973) (wholesale breach of a CBA's wage provision was a "death blow" to the contract and the bargaining relationship); *Navigator Communication Systems*,

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<sup>1</sup> The Union also adopts Counsel for the General Counsel's Cross-Exceptions.

331 NLRB 1056 (2000) (company's failure to provide union notice prior to closing plant and to pay out accrued benefits constituted repudiation of bargaining relationship).

Additionally, the Union cross-excepts to the ALJ's failure to include an award of the General Counsel's and the Union's costs and attorney fees for litigating this case. The factual and analytical basis for the ALJ's recommendation of extraordinary relief are unassailable. The enormity of this Company's unfair labor practices is unprecedented in modern Board annals. And this Company compounded its terrible unfair labor practices by adhering to frivolous and even insulting arguments. For example, the Company *still* contends the Union did not make an unconditional offer to return to work. (Company Brief pp. 3-5) The Company *still* it merely confirmed the May 5, 2008 "status" (and did not discharge) all the employees on August 4, 2008. (Company Brief p. 7) The Company *still* contends that it did not refuse to bargain on August 14, 2008 and is waiting for the Union to request bargaining regarding temporary replacements. (Company Brief p. 8)

An award of the General Counsel's and the Union's litigation costs and attorney fees in this case is consistent with Board precedent. See, e.g., *Unbelievable, Inc. d/b/a Frontier Hotel & Casino*, 318 NLRB 847 (1995), *enfd.* 118 F.3d 795 (D.C. cir. 1997), *Alwin Mfg. Co., Inc.*, 326 NLRB 646 (1998), *enfd.* 192 F.3d 133 (D.C. Cir. 1999), *Care Manor of Farmington, Inc.*, 318 NLRB 330 (1995).

For the foregoing reasons, the Union submits that the ALJ erred by dismissing the Complaint allegation that the Company repudiated the collective bargaining relationship and by failing to include the General Counsel's and the Union's litigation costs and attorney fees in the remedy. The Union requests that the Board find that the Company violated §8(a)(1) and (5) of the Act by repudiating its collective bargaining relationship with the Union. The Union also requests that the

Board issue a remedial order that includes reimbursement of litigation costs and attorneys fees to the Union and the General Counsel.

Respectfully submitted,

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Dated: May 26, 2010

Counsel for Charging Union

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**STATEMENT OF SERVICE**

The undersigned states that on May 26, 2010, he served the Charging Party's Cross-Exceptions to the Decision of the Administrative Law Judge upon the following parties by electronic mail:

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