

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

STEVENS CREEK CHRYSLER JEEP
DODGE, INC.

and

Cases 20-CA-33367
20-CA-33562
20-CA-33603
20-CA-33655

MACHINISTS DISTRICT LODGE 190, MACHINISTS
AUTOMOTIVE LOCAL 1101, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS OF AMERICA, AFL-CIO

GENERAL COUNSEL'S EXCEPTIONS TO THE
SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

The General Counsel hereby excepts to the following portions of the Administrative Law Judge Jay R. Pollack's Supplemental Decision (hereinafter SALJD) dated July 29, 2009.

Exception Number	Page	Line	Exception
1	4	1-11	The ALJ's failure to find that there were 13 employees in the bargaining unit as of March 2, 2007, the date the threats and interrogations as found by the ALJ commenced. Tr. 18-19.
2	4	1-11	The ALJ's failure to find that authorization cards were signed by 9 out of the 13 employees in the bargaining unit as of March 2, 2007. Tr. 18-19.
3	Passim.		The ALJ's failure to find that mechanic Emmanuel Gonzales was given a pay raise of \$1.50 per hour to dissuade him from supporting the Union. Tr. <i>passim.</i>
4	2-3	24-14	The ALJ's failure to find that Respondent discharged Patrick Rocha because of his union support and activities and to dissuade other employees from supporting the Union. Tr. <i>passim.</i>

5	2-3	24-14	The ALJ's failure to find that Respondent treated Rocha disparately as it has not disciplined other employees for coming in late, leaving early, or missing workdays altogether. Tr. <i>passim</i> .
6	2-3	24-14	The ALJ's failure to find that Respondent did not require employees to be on the premises forty hours a week. Tr. 124, 134, 292, 378, 634, 865.
7	2	46-50	The ALJ's failure to find that the reason why Rocha was not at work forty hours a week was because Respondent did not assign him a sufficient amount of work to keep him occupied forty hours a week. Tr. 333-36.
8	3	10-14	The ALJ's failure to find that Respondent paid employees on a piecerate system, whereby employees were not paid for time spent on premises but for work produced regardless of the amount of hours it took them to produce it. Tr. <i>passim</i> .
9	2-3	24-14	The ALJ's failure to find that Respondent presented shifting reasons for its decision to discharge Rocha.. Tr. <i>passim</i> .
10	3-4	24-14	The ALJ's failure to find that Respondent had condoned whatever problems it was having, if any, with Rocha's attendance until it learned of the Union's organizing drive and suspected Rocha of being a ringleader. Tr. <i>passim</i> .
11	3	1-8	The ALJ's failure to find that Zaheri gave a statement to the Board during its investigation that the decision to discharge Rocha was made on Monday, March 5, 2007, the next working day after Respondent learned of the Union's organizing drive. GC Exh 34.
12	3	4-5	The ALJ's finding that Respondent made the decision to discharge Rocha before March 2, 2007. Tr. <i>passim</i> .
13	3-4	14-14	The ALJ's failure to find that Respondent's claim that it made the decision to discharge Rocha before March 2, 2007, is not supported by any documentary evidence. Tr. <i>passim</i> .

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| 14 | 2 | 24-34 | The ALJ's failure to find that, whereas it made out Rocha's final paycheck at 8:06 a.m. on Monday, March 5, 2007, in anticipation of discharging him that day, its failure to make out the final paycheck the morning of Friday, March 2, 2007, was inconsistent with its testimony that it was going to discharge Rocha on March 2, 2007, but could not do so due to the unexpected arrival of a Chrysler factory representative. Tr. 1061. |
| 15 | 2-3 | 24-14 | The ALJ's failure to find that Garcia's statement made to Michael Lane on Friday, March 2, 2007, immediately after it learned of the Union's organizing, that if he found out that Rocha and Avelar had organized the union luncheon meeting held that day, he would "blow them out" (which the ALJ found to have been made) is inconsistent with Respondent's testimony that it had decided to terminate Rocha on February 27, 2007, and was just awaiting the end of the workweek to carry it out. |
| 16 | 2 | 24-34 | The ALJ's failure to explain why he credited Garcia's testimony that Respondent had already decided to discharge Rocha when it learned about the Union's organizing drive, testimony unsupported by any documentary evidence, when he discredited Garcia on almost every other aspect of his testimony. Tr. <i>passim</i> . |
| 17 | 2-3 | 24-14 | The ALJ's failure to find that Garcia's testimony that Rocha was discharged because of his attendance problems culminating with a late arrival on February 27, 2007, was inconsistent with the statement on the Separation Notice given Rocha on March 6, 2007, that he was terminated because of "Patrick's inability to get the work done correctly and on time" and "left early without permission did not advise anybody that he left."
GC Exh 15 |
| 18 | 2-3 | 24-14 | The ALJ's failure to find that Garcia's testimony that Rocha was discharged because he came in late on February 27, 2007, is not listed on the Separation Notice given to Rocha, which instead refers to Rocha's clocking out early on March 2, 2007. GC Exh 15. |
| 19 | 2 | 49-50 | The ALJ's finding that Garcia counseled Rocha on February 12, 19, and 26, 2007 about attendance problems. GC Exh 15. |

GC's Exceptions to Supplemental Decision of ALJ
Cases 20-CA-33367 et al

19a	2	36-39	The ALJ's finding that Frontella counseled Rocha about late arrivals, long lunches, and early departures
20	2	46-50	The ALJ's failure to draw an adverse inference from Respondent's failure to call as a witness a computer expert who could have examined the hard drive on Garcia's computer and establish exactly when the alleged February 12, 2007, minute was created.
21	3	12-13	The ALJ's finding that parts became available shortly after Rocha clocked out. Tr. <i>passim</i> .
22	2	24	The ALJ's finding that Rocha was discharged for attendance and productivity issues. Tr. <i>passim</i> .
23	2-3	24-14	The ALJ's failure to find that Rocha's productivity was better than most other mechanics employed by Respondent. GC Exh 26.
24	2-3	24-14	The ALJ's failure to find that Respondent's asserted reason for discharging Rocha is not supported by any documentary evidence. Tr. <i>passim</i> .
25	2-3	24-14	The ALJ's failure to find that Respondent's statement to the Employment Development Department regarding Rocha's discharge is inconsistent with the reasons it asserted herein. GC Exh 31.
26	2	24-34	The ALJ's failure to find that Garcia and Zaheri were not telling the truth when they claimed Rocha was not at work on Monday, March 5, 2007, inasmuch as Respondent's own production records establish he worked that day. GC Exh 23, 24.
27	2	24-34	The ALJ's failure to find that Respondent prepared Rocha's final paycheck the morning of the next working day after it learned of Rocha's union activities. Tr. 974.
28	2-3	24-14	The ALJ's failure to find that Respondent allows its mechanics to leave early provided they first notify a manager. Tr. <i>passim</i> .
29	2-3	24-14	The ALJ's failure to find that Rocha would notify Service Manager Mike Frontella when he left early during his employment at Respondent. Tr. 318.

30	2-3	24-14	The ALJ's failure to find that Garcia's and Zaheri's testimony about the reason for Rocha's discharge was inconsistent, as both claimed they brought the issue to the attention of the other. Tr. 969, 1188.
31	3	10-14	The ALJ's failure to find that Respondent incurred no costs due to the early departure of a mechanic who had no work assigned to him. Tr. <i>passim</i> .
32	3	10-14	The ALJ's failure to find that Respondent's production records establish that its workload was relatively light during the month of February, 2007. GC Exh 25.
33	2	49-50	The ALJ's credibility determination that Garcia testified truthfully that he counseled Rocha on February 12, 19, and 26, 2007, about his attendance problems and his failure to explain said credibility determination. Tr. <i>passim</i> .
34	2	26-29	The ALJ's implied credibility determination that Garcia testified truthfully that he contacted Zaheri and recommended Rocha's discharge on February 27, 2007, and his failure to explain said credibility determination. Tr. <i>passim</i> .
35	2	26-29	The ALJ's implied credibility determination that Zaheri testified truthfully that he approved the discharge of Rocha on February 27, 2007, and his failure to explain said credibility determination. Tr. <i>passim</i> .
36	2	26-29	The ALJ's implied credibility determination that Garcia testified truthfully that he intended to discharge Rocha on March 2 but was delayed due to the unexpected arrival of a Chrysler factory representative, and his failure to explain said credibility determination. Tr. <i>passim</i> .
37	2	26-29	The ALJ's failure to draw an adverse inference from Respondent's failure to call, as a witness, the unnamed Chrysler factory representative who allegedly visited Respondent's facility on March 2, 2007.
38	4	27-30	The ALJ's failure to find and conclude that the serious and pervasive unfair labor practices found herein warranted a <i>Gissel</i> bargaining order. Tr. <i>passim</i> .

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| 39 | 4 | 32-34 | The ALJ's failure to find and conclude that Respondent unilaterally eliminated the job of Steve Rother, Lube Technician, in violation of Section 8(a)(5). Tr. 75, 962-3. |
| 40 | 4 | 32-34 | The ALJ's failure to find and conclude that Respondent unlawfully failed to furnish the Union with requested information relevant to collective bargaining in violation of Section 8(a)(5). GC Exh 21, 22. |

Dated at San Francisco, California, this 26th day of August, 2009.

/s/ David B. Reeves

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DATE OF MAILING August 26, 2009

AFFIDAVIT OF SERVICE OF

**GENERAL COUNSEL'S EXCEPTIONS TO THE
SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by electronic mail in pdf format, upon the following persons, addressed to them at the following addresses:

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Subscribed and sworn to before me on

August 26, 2009

DESIGNATED AGENT

**/s/ Susie Louie
NATIONAL LABOR RELATIONS BOARD**