

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

**BASHAS', INC., d/b/a BASHAS',
FOOD CITY, and A.J.'S FINE FOODS**

and

**Cases 28-CA-21435
28-CA-21501**

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 99**

and

**Cases 28-CA-21590
28-CA-21592
28-CA-21639
28-CA-21640
28-CA-21646
28-CA-21676**

**UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION**

**Cases 28-CA-21739
28-CA-21785
28-CA-21803**

GENERAL COUNSEL'S CROSS-EXCEPTIONS

Counsel for the General Counsel (CGC), pursuant to Section 102.46 of the Board's Rules and Regulations, files the following exceptions to the Decision of Administrative Law William L. Schmidt [JD(SF) 29-09] (ALJD), issued on September 24, 2009, in the above captioned cases:

1. The Administrative Law Judge's (ALJ) failure to find that Bashas', Inc., d/b/a Bashas', Food City, and A.J.'s Fine Foods (Respondent) discriminated against employee Ramon de la Torre in violation of Section 8(a)(1) and (3) of the Act (ALJD at 51-52), and the ALJ's finding that Respondent met its' burden under *Wright Line*, 251 NLRB 1083 (1980) (ALJD at 71). In support of this exception, CGC relies upon the testimony of testimony of Ramon de la Torre. (Tr. 778-954) This exception should be granted because the record

establishes that Respondent did, in fact, engage in discrimination when it suspended de la Torre.

2. The ALJ's failure to find that Respondent's June 1, 2007, letter to the Union, barring all Union representatives from all stores for any purpose, violated Section 8(a)(1) and (5) of the Act; the ALJ's failure to find that the letter constitutes a total bar to non-employee Union agents from the eight stores where the Union represents employees. (ALJD at 16-17) In support of this exception, CGC relies upon the testimony of Lillian Flores and the record exhibits associated therewith, including, but not limited to, GCX 70, (Tr. 1874-1957) and the other record evidence referenced in CGC's brief in support of cross-exceptions.

3. The ALJ's failure to find that Respondent violated Section 8(a) (1) of the Act by supervisor Balthazar Rincon's statement to known Union adherents that they were referred to as the "night crew infestation" disparaging the Union. (ALJD at 38) In support of this exception, CGC relies upon the testimony of Teresa Cano (Tr. 228-245) and the other record evidence referenced in CGC's brief in support of cross-exceptions.

4. The ALJ's failure to find that Respondent violated Section 8(a)(1) of the Act by soliciting employee complaints and grievances and promising its employees increased benefits and improved terms and conditions of employment in or about September 2007 when Supervisor Hansen asked employee Arturo Mendoza "What are you employees mad about? You guys get paid good, you guys get good benefits, what do you guys want?" (ALJD at 81) In support of this exception, CGC relies upon the testimony of Arturo Mendoza (Tr. 501-502) and the other record evidence referenced in CGC's brief in support of cross-exceptions.

5. The ALJ's failure to find that Respondent violated Section 8(a)(1) of the Act by interrogating its employees about their union membership, activities and sympathies when,

on or about October 15, 2007, supervisor Mel Kelley asked employee Ramon de la Torre “who had filled out his papers, if it was the ones from the Union.” (ALJD at 69) In support of this exception, the CGC relies upon the testimony of de la Torre, and record associated exhibits therewith (Tr. 863-915) and other record evidence referenced in CGC’s brief in support of cross-exceptions.

6. The ALJ’s failure to find that Respondent violated Section 8(a) (1) of the Act, when supervisor Steve Schrade informed employee Ramon de la Torre that if he insisted on presenting a response that was prepared on de la Torre’s behalf by the Union, he would be terminated, thus threatening employees with discharge, unspecified reprisals, and refusing to accept the written responses of employees to potential disciplinary action because employees had sought assistance from the Union. (ALJD at 72-73) In support of this exception, the General Counsel relies upon the testimony of Ramon de la Torre and record associated exhibits therewith (Tr. 865-874) and the other record evidence referenced in CGC’s brief in support of cross-exceptions.

7. The ALJ’s failure to order Respondent to post one complete Notice providing a remedy for all violations at all of Respondent’s stores, or in the alternative, one complete notice at the 12 specific stores and the distribution center (ALJD at 95) and the other record evidence referenced in CGC’s brief in support of cross-exceptions.

8. The ALJ's failure to order that interest on backpay be computed on a compounded quarterly basis (ALJD at 94).

Dated at Phoenix, Arizona, this 21st day of December 2009.

Respectfully submitted,

/s/ Sandra L. Lyons

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CERTIFICATE OF SERVICE

I hereby certify that a copy of GENERAL COUNSEL'S CROSS-EXCEPTIONS in BASHAS, INC., Cases 28-CA-21435, et al., was served by E-Gov, E-Filing E-mail, and overnight delivery via Federal Express on this 21st day of December 2009, on the following:

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