

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

VISION OF ELK RIVER, INC.

and

SUSIE STETLER, An Individual.

CASE NO. 18-CA-19200

**CROSS-EXCEPTIONS ON BEHALF OF
RESPONDENT**

On July 7, 2010, Administrative Law Judge Richard A. Scully (ALJ) issued a Decision in this case. Acting General Counsel filed Exceptions to the ALJ's Decision on July 28, 2010. Pursuant to Section 102.46(e) of the Board's Rules & Regulations, Respondent Vision of Elk River, Inc. (Respondent or Vision) files the following cross-exceptions, along with a separate Brief in Support of the Respondent's Cross-Exceptions:

1. To the finding that the matrix of criteria used by the Respondent to determine who would be laid off was anything but an objective analysis of its employees' performance, was irrational, unjustifiable, and applied in a manipulative manner to target specific employees. (ALJD 10: 5-9). The ALJ's conclusion is unsupported by evidence in the record and contrary to law. Included within the scope of this exception are exceptions to the following findings:

- a. That it is difficult to understand Smith's reasons for removing the safety component from the matrix of selection criteria. (ALJD 4: 7-9).
 - b. That Smith's removal of the component considering the employees' willingness to work adversely impacted the discriminatees' scores. (ALJD 4: 10-11).
 - c. That Smith replaced two objective criteria with two totally subjective criteria which enabled Smith to manipulate the scoring any way she chose. (ALJD 4: 13-14).
2. That the evidence as a whole shows there was very little that was said or done by Respondent's employees concerning the workplace that did not promptly make its way back to its managers. (ALJD 5: 48, 6: 1-2). The ALJ's conclusion is unsupported by evidence in the record.
3. To the finding that Respondent closely monitored all aspects of the employees' activities, which undermines its claim that it had no knowledge of their Union activity or support. (ALJD 7: 33-34; 44-46). The ALJ's conclusion is unsupported by evidence in the record, and is contrary to law. Included within the scope of these exceptions are exceptions to the following findings:
 - a. That Martin encountered a teacher's aide at a department store prior to the start of the 2009 summer school, which led to the June 3, 2009 memorandum issued by Smith. (ALJD7:48-50; 8:1-4);
 - b. That Smith's request that Walberg obtain a doctor's note saying she was capable of performing her duties as an aide demonstrates that Respondent closely monitored all aspects of the employees' activities. (ALJD: 7: 36-39, 44-45);

c. That Orr's acceptance of the representations of an unidentified employee that Stetler and Edick brought a cake to a pot luck lunch at the Elk River Facility to celebrate Orr's layoff shows that Respondent closely monitored employee activities and was informed of what employees were doing. (ALJD 8: 6-17, 22-24).

4. To the finding that Respondent was aware that Edick was a supporter of the Union and that she had engaged in protected activities. (ALJD 6: 2-3). The ALJ's conclusion is unsupported by evidence in the record, and contrary to law.

5. To the finding that Respondent had knowledge of Stetler's involvement with the Board hearing and believed that she supported the Union. (ALJD 6: 42-43). The ALJ's conclusion is unsupported by evidence in the record, and contrary to law.

6. To the finding that Respondent had knowledge of Martin's involvement with the Board hearing. (ALJD 6: 6-17). The ALJ's conclusion is unsupported by evidence in the record, and contrary to law.

7. To the finding that Respondent had knowledge of Walberg's union activity. (ALJD 19-24). The ALJ's conclusion is unsupported by evidence in the record, and contrary to law.

8. To the finding that Respondent had knowledge of union activity on the part of each of the alleged discriminatees. (ALJD 7:25-26). The ALJ's conclusion is unsupported by evidence in the record, and contrary to law.

9. To the finding that Respondent had union animus to the extent the ALJ credited Forner's testimony, discredited the testimony of Oswald and Orr refuting Forner's testimony;

and/or relied upon the "History of Charges" memorandum. The ALJ's conclusion is unsupported by evidence in the record, and contrary to law.

WHEREFORE, for the reasons stated herein and more fully discussed in Respondent's Brief in support of the Cross-Exceptions, Vision respectfully submits that the ALJ's recommended Decision should be modified accordingly, and the Complaint be dismissed in its entirety.

Dated: August 18, 2010

SEATON, BECK & PETERS, P.A.

A large, stylized handwritten signature in black ink, appearing to read 'TR Revnew', is written over a horizontal line.

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ATTORNEYS FOR VISION OF ELK RIVER, INC.

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Linda L. Finn of the City of Prior Lake, County of Scott, in the State of Minnesota, being duly sworn says that on the 18th day of August, 2010 she served the following:

1. **Respondent Vision of Elk River, Inc.’s Brief In Support of Cross Exceptions to the Administrative Law Judge Decision;**
2. **Respondent Vision of Elk River, Inc.’s Brief in Response to Acting General Counsel’s Exceptions**
3. **Cross-Exceptions on behalf of Respondent Vision Of Elk River Inc.**

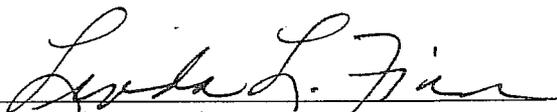
on the parties listed below, directed to said parties at their last known address at:

VIA ELECTRONIC MAIL (suzaori7375@yahoo.com)
AND FEDERAL EXPRESS – OVERNIGHT DELIVERY
(w/o signature)

Susie Stetler
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Zimmerman, MN 55398

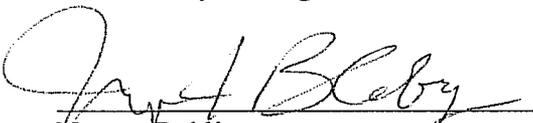
VIA ELECTRONIC MAIL (Florence.brammer@nlrb.gov) AND U.S. MAIL

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Linda L. Finn

Subscribed and sworn to before me
this 18th day of August, 2010



Notary Public

