

1 was only talking to the worker and that Ms. Riley’s truncated and discriminatory
2 investigation which violated a number of company rules proves that there was no
3 reasonable belief. Indeed the decision to terminate was patently because of her support for
4 the Union and the scheduled election. Furthermore it proves that Ms. Trespalacios conduct
5 was benign and that Ms. Riley grabbed onto the incident as a means of terminating an
6 active union supporter and of sabotaging the election.

7 For the reasons suggested in our opening brief in support of our exceptions and for
8 the reasons advanced by Counsel for General Counsel, the findings of the Administrative
9 Law Judge and recommend the decision with respect to Ms. Trespalacios should be wholly
10 affirmed.

11 2. The Administrative Law Judge found that a number of rules violated the Act.
12 Recently the Board restated the rule with respect to whether a statement violates the Act.
13 In that case, the question was whether the conduct of the Union violated Section 8(b)(1)(A)
14 and the Board noted that the question “is whether the flyer reasonably tended to restrain or
15 coerce employees in the exercise of their Section rights...” The Board then explained that
16 the appropriate test is as stated in *DD Construction Group*, 339 NLRB, 303, at 303-304 and
17 that is “whether the words could reasonably be construed as coercive, whether or not that is
18 the only reasonable construction.” *See Service Employees International Union, Local*
19 *121RN*, 355 NLRB 40, Slip Opinion pages 1-2 (2010).

20 The test must be applied here. Each of the statements in the rules, reasonably could
21 have been read by any worker (and not necessarily all workers) as restraining them in the
22 exercise of their rights guaranteed by Section 7. That unlawful construction need not be the
23 only construction. Applying this standard, the rules were all unlawful.

24 4. For the reasons states above and for the reasons to be submitted by Counsel for
25 General Counsel, the Exceptions of the Respondent/Employer should be wholly rejected.

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1 Dated: August 30, 2010

2 WEINBERG, ROGER & ROSENFELD
3 A Professional Corporation

4 By: /s/David A. Rosenfeld
5 CAREN P. SENCER for
6 DAVID A. ROSENFELD
7 Attorneys for Charging Party

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PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On August 30, 2010, I served upon the following parties in this action:

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copies of the document(s) described as:

ANSWERING BRIEF

BY EMAIL

BY FACSIMILE I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on August 30, 2010.

/s/Katrina Shaw
Katrina Shaw