

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

CONTEMPORARY CARS, INC.  
d/b/a MERCEDES-BENZ OF ORLANDO  
and AUTONATION, INC.  
SINGLE AND JOINT EMPLOYERS

and

Cases	12-CA-26126
	12-CA-26233
	12-CA-26306
	12-CA-26354
	12-CA-26386
	12-CA-26552

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO

**GENERAL COUNSEL'S CROSS-EXCEPTIONS  
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the General Counsel hereby files cross-exceptions to the Decision of Administrative Law Judge (ALJ) George Carson II, dated March 18, 2011, in the above-captioned cases, as follows:<sup>1</sup>

1. The ALJ inadvertently misstated the legal name of Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando (Respondent MBO) as Contemporary Cars, Inc., d/b/a Mercedes-Benz of Orlando, **Inc.**, (emphasis added) in the case caption headings, the body of the Decision and the recommended Notice to Employees. [ALJD, cover page of Order Transferring Proceeding to the NLRB, case caption; p. 1, case caption; p. 2, ln. 5; p. 35, ln. 27; Notice to Employees, p. 2, ln. 26-27; Affidavit of Service of ALJD, case caption]<sup>2</sup>

2. The ALJ erred by failing to recommend an adequate nationwide remedy with respect to the unlawful no solicitation rule contained in the handbook of AutoNation, Inc. (Respondent AutoNation). [ALJD, p. 34, ln. 37-38, 50-52]

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<sup>1</sup> General Counsel is filing a brief in support of cross-exceptions and a separate answering brief to Respondents' exceptions on this date.

<sup>2</sup> The following references will be used throughout this document:

[ALJD p. \_\_, ln. \_\_ ] = ALJD page and line numbers

[TR \_\_ ] = transcript page number

[GC Ex \_\_ ] = General Counsel's exhibit number

[R Ex \_\_ ] = Respondents' exhibit number

3. The ALJ erred by mischaracterizing the testimony of Brian Davis, Respondent AutoNation's vice president and assistant general counsel, regarding Davis' statements made to employees at a meeting on or about a date in mid to late November 2008. Specifically, Davis did not tell the employees "This is serious business, okay. This is not about a union campaign. This is about an industry on the verge of collapse." Instead, those were editorial comments about the meeting. [ALJD, p. 12, ln. 37-38]

4. The ALJ erred by finding that there is an "absence of corroborative testimony establishing that Davis couched his remarks at the meeting in terms relating to the organizational campaign rather than current economic circumstances" and by failing to find that employee witnesses, David Poppo, Brad Meyer, Juan Cazorla, James Weiss, John Persaud and Anthony Roberts corroborated each other's testimony that Davis couched his remarks in terms relating to the organizing campaign. [ALJD, p. 12, ln. 41-43]

5. The ALJ erred by finding that Davis' remarks did not convey "any threat related to union activity." [ALJD, p. 12, ln. 43-44]

6. The ALJ erred by failing to find that, in November 2009, Respondents, by Brian Davis, threatened employees with job loss and discharge if they selected International Association of Machinists and Aerospace Workers, AFL-CIO (the Union) as their bargaining representative, in violation of Section 8(a)(1) of the Act, as alleged in paragraphs 23(b) and 24(a) of the Consolidated Complaint, and by failing to provide an appropriate Board Order and remedial Notice to Employees regarding that violation of the Act. [ALJD, p. 12, ln. 44]

7. The ALJ erred by failing to find that on December 16, 2008, Respondents, by Brian Davis, coercively interrogated service technician James Weiss about the union sympathies of other employees, in violation of Section 8(a)(1) of the Act, as alleged in paragraph 31(a) of the Consolidated Complaint. [ALJD, p. 15, ln. 31-41]

8. The ALJ erred by failing to find that on December 16, 2008, Respondents, by Brian Davis, coercively interrogated service technician James Weiss about whether employees had voted in the secret ballot election conducted by the Board, in violation of Section 8(a)(1) of the Act, as alleged in paragraph 31(b) of the Consolidated Complaint. [ALJD, p. 15, ln. 21-52]

9. The ALJ erred by finding that “the reduction in-force in April 2009 was dictated by economic circumstances.” [ALJD, p. 24, ln. 51]

10. The ALJ erred by finding that “[t]he Respondents do not use seniority as a factor” concerning the selection of employees for permanent lay-off. [ALJD, p. 27, ln. 12]

11. The ALJ erred by finding that “Cazorla, Puzon, Poppo, and Persaud would have been discharged even in the absence of their union activities.” [ALJD, p. 27, ln. 47-48]

12. The ALJ erred by recommending the dismissal of the allegations in paragraphs 41(b), 41(c) and 41(d) of the Consolidated Complaint alleging that Respondents discharged (or laid off) employees Juan Cazorla, Larry Puzon, David Poppo, and Tumeshwar “John” Persaud, in violation of Section 8(a)(1) and (3) of the Act. [ALJD, p. 27, ln. 48-49]

13. The ALJ erred by finding that, with regard to Juan Cazorla, David Poppo, Tumeshwar “John” Persaud and Larry Puzon, “the layoff/discharges did not violate Section 8(a)(3) of the Act” and by failing to find that on or about April 2, 2009, Respondents laid off Juan Cazorla, and on or about April 3, 2009, Respondents laid off David Poppo, Tumeshwar “John” Persaud and Larry Puzon because of their union activities and sympathies, in violation of Section 8(a)(1) and (3) of the Act. [ALJD, p. 30, ln. 44]

14. The ALJ erred by finding Dean Catalano’s conduct at the October 2, 2009 meeting, including his statement to a representative of the Orange County Health Department that “‘this is what’ he got” from Respondents’ management, did not constitute protected conduct. [ALJD, p. 29, ln. 46-47]

15. The ALJ erred by recommending the dismissal of paragraph 42(c) of the Consolidated Complaint alleging that, on October 13, 2009, Respondents issued Dean Catalano a documented coaching, in violation of Section 8(a)(1) and (3) of the Act. [ALJD, p. 29, In. 47-48]

16. The ALJ erred by failing to find that, on October 13, 2009, Respondents issued a documented coaching to Dean Catalano because of his union and protected concerted activities, in violation of Section 8(a)(1) and (3) of the Act. [ALJD, p. 29, In. 47-48]

17. The ALJ erred by finding that “[o]n February 1, 2009, [Respondents’ team leader] Aviles distributed a document reflecting a reduction ... from 4.2 to 2.8 hours for Flex B service,” and by failing to find that there was a reduction from 4.2 to 2.3 hours for Flex B service. [ALJD, p. 33, In. 7-8]

**DATED** at Tampa, Florida this 16<sup>th</sup> day of May, 2011.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that **GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** in Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando and AutoNation, Inc., Cases 12-CA-26126, 12-CA-26233, 12-CA-26306, 12-CA-26354, 12-CA-26386 and 12-CA-26552, was electronically filed and served by electronic mail as set forth below on the 16<sup>th</sup> day of May 2011.

By electronic filing at [www.nlr.gov](http://www.nlr.gov) to:

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Respectfully submitted,

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