

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

MARQUEZ BROTHERS ENTERPRISES, INC.

and

Case No. 21-CA-39581

ALFONSO MARES, an Individual

and

Case No. 21-CA-39609

JAVIER AVILA, an Individual

EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent Marquez Brothers Enterprises (“MBE” or “the Company” or “the Employer”), excepts to the decision of Administrative Law Judge Kocol (“ALJ Kocol”) in the above-captioned matter as follows:

1. The failure of ALJ Kocol to credit the testimony that Gary Smith instructed Mares and Avila to keep their Union status hidden. (AD 4:11-14)

2. ALJ Kocol's finding that the fact Bertha Yontomo worked next to Arturo Perfecto showed that Mares was terminated for his union activities. (AD 4:20-32, 10:40-11:1).
3. The failure of ALJ Kocol to credit the June 1, 2010 occurrence report. (AD 4:37-49).
4. The failure of ALJ Kocol to credit the testimony of Veloz regarding the June 1, 2010 occurrence report. (AD 5:6-9)
5. The failure of ALJ Kocol to credit the June 2, 2010 occurrence report. (AD 5:21-32).
6. The failure of ALJ Kocol that MBE failed to present evidence to support Veloz's June 2, 2010 occurrence report. (AD 5:37-38)
7. The finding of ALJ Kocol that the June 1, 2010 written warning was inconsistent with the occurrence report. (AD 6:45-47).
8. The finding of ALJ Kocol that MBE recognized that the alleged misconduct in the incidence report was insufficient to support termination of Mares. (AD 7:7-9).
9. The failure of ALJ Kocol to credit the testimony of Tinajero. (AD 8:16-20).
10. The failure of ALJ Kocol to properly credit the prior disciplinary action against Mares. (AD 9:11-26).
11. The failure of ALJ Kocol to properly credit the TESTIMONY OF Vasquez and Lara regarding the Mach 2010 meeting they had with Mares regarding poor service.

12. The finding of ALJ Kocol that Mares' Union activity was extensive. (AD 10:10-11).

13. The failure of the ALJ to properly credit the fact that Yontomo was not acting as an agent of MBE and therefore her knowledge cannot be attributed to MBE. (AD 10:32-34).

14. The finding of ALJ Kocol that MBE had knowledge of Mares' Union activity. (AD 10:38-40).

15. The finding of ALJ Kocol that Mares' Union activity was a motivating factor in his termination. (AD 10:38-40).

16. The finding that knowledge of Yontomo contribute in any way to the knowledge of MBE. (AD 10:40-11:1).

17. The finding of ALJ Kocol that the fact Mares waited 2-3 hours for Human Resources shows that MBER had not fully prepared the paperwork it needed to justify the discharge but still chose to hastily terminate him. (AD 11:3-5).

18. The finding of ALJ Kocol that there was no evidence other than Union activity to explain his abrupt termination. (AD 11:6-7)

19. The failure of ALJ Kocol to properly credit the fact that other employees were terminated for similar performance problems. (AD 11:34-37).

20. The finding of ALJ Kocol that Mares' conduct was insufficient to cause his termination until after he engaged in Union activities. (AD 11:42-44).

21. The failure for ALJ Kocol to credit the testimony that Avila stated repeatedly at meetings that he was against the Union. (AD 12:10-30, 34-35 and 36-37).

22. The finding of ALJ Kocol that it is exaggerated that Avila would make comments at each meeting about opposing the Union. (AD 12:35-36).

23. The finding of ALJ Kocol that Barajas stated that Avila was “burnt with the lady” and “in the blacklist.” (AD 13:13-22, 36-41).

24. The finding that MBE violated Section 8(A)(1) by coercively interrogating Avila regarding his Union activities. (AD 13:41-42).

25. The finding of ALJ Kocol that Barajas knew of those who supported the Union because he was aware of who signed authorization cards. (AD 15:29-32).

26. The finding of ALJ Kocol that MBE violated Section 8(a)(1) by coercively encouraged employees to ask the Union to return their authorization cards. (AD 16:10-11).

27. The failure of ALJ Kocol to properly credit the prior discipline of Avila/ (AD 17:22-20:12).

28. The finding of not properly crediting the discipline of Avila because they all contained an admonition that future incidents would relate in discipline up to and including termination. (AD 20:18-22).

29. The finding of ALJ Kocol that MBE knew of Avila’s Union activity. (AD 20:28-29).

30. The finding of ALJ Kocol that general knowledge that an election occurred constituted knowledge of Avila's Union activity. (AD 20:29-30)..

31. The finding of ALJ Kocol that Barajas' disputed comment regarding being "burnt by the lady" showed knowledge by MBE of Avila's Union activities. (AD 20:30-32).

32. The finding of ALJ Kocol that MBE unlawful informed employees of their right to request their authorization cards and threatened Avila with reprisals. (AD 20:34-39).

33. The finding of ALJ Kocol that Avila's termination two weeks after the election showed any unlawful motive of MBE. (AD 20:39-41).

34. The finding of ALJ Kocol that the ground for Avila's termination that he lied to his supervisor about leaving product at a store was false. (AD 20:41-43).

35. ALJ Kocol's Conclusion of Law that MBE violated the Act by terminating Mares and Avila. (AD 21:22-24).

36. ALJ Kocol's Conclusion of Law that MBE violated the Act by coercively encouraging employees to request the return of Union authorization cards. (AD 21:26-30).

37. ALJ Kocol's Conclusion of Law that MBE violated the Act by coercively interrogating Avila regarding his Union activities. (AD 21:26-7 and 32).

38. ALJ Kocol's Conclusion of Law that MBE violated the Act by threatening Avila with reprisals for engaging in Union activity. (AD 21:26-27 and 34-35).

39. ALJ Kocol's Remedy (AD 22:39-22:8).

40. ALJ Kocol's Order. (AD 22:10-23:25.)

Respectfully submitted,

By:



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ATTORNEYS FOR RESPONDENT

PROOF OF SERVICE

**National Labor Relations Board (NLRB) – Region 21
Case No. 21-CA-39581 and Case No. 21-CA-39609**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of LOS ANGELES, State of California. I am over the age of 18 and not a party to the within action; my business address is 725 S. Figueroa Street, Suite 2500, Los Angeles, CA 90017.

On July 20, 2011, I served the foregoing document described as:

EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

National Labor Relations Board
Honorable Lester A. Heltzer, Executive Secretary
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(E-filed)

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[XX] **BY E-MAIL OR ELECTRONIC TRANSMISSION** Based on a Court order or on an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) described above to be sent from e-mail address bandesr@jacksonlewis.com to the persons at the e-mail address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[XX] **BY FEDERAL EXPRESS OVERNITE** I am "readily familiar" with the firm's practice of collection and processing correspondence for deposit with Federal Express Overnight. Under that practice it would be deposited with Federal Express Overnight on that same day with fees thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if date of receipt of the document by Federal Express Overnight is more than one day after date of deposit for mailing in affidavit.

[XX] **FEDERAL** I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed July 20, 2011, at Los Angeles, California.


Rick Bandes