

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

G4S REGULATED SECURITY
SOLUTIONS, A DIVISION OF
G4S SECURE SOLUTIONS (USA) INC.
f/k/a THE WACKENHUT CORPORATION

and

Cases 12-CA-26644
12-CA-26811

THOMAS FRAZIER, an Individual

and

CECIL MACK, an Individual

**ACTING GENERAL COUNSEL'S EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S
DECISION AND RECOMMENDED ORDER**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the undersigned Counsel for the Acting General Counsel files the following exceptions to the Decision of Administrative Law Judge William N. Cates, which issued on June 27, 2011.

Exception No. 1: To the Administrative Law Judge's erroneous conclusion that at all times material herein, Thomas Frazier served as a supervisor of G4S Regulated Security Solutions, A Division of G4S Secure Solutions (USA) Inc. f/k/a The Wackenhut Corporation (Respondent) within the meaning of the National Labor Relations Act (the Act) and is outside the Act's protection. (ALJD 2:19-21; 3:5).¹

¹ References to the Administrative Law Judge's Decision and Recommended Order ("the Decision") will be designated as "ALJD" followed by the appropriate page(s) and line(s). "Tr" refers to transcript pages identified by page and line. "GCX" refers to exhibits of the General Counsel. "RX" refers to Respondent's exhibits.

Exception No. 2: To the Administrative Law Judge's erroneous conclusion that at all times material herein, Cecil Mack served as a supervisor of Respondent within the meaning of the Act and is outside the Act's protection. (ALJD 2:18-22; 3:5).

Exception No. 3: To the Administrative Law Judge's failure to conclude that Thomas Frazier is an employee as defined in Section 2(3) of the Act. (ALJD 2:18-22; 3:5)

Exception No. 4: To the Administrative Law Judge's failure to conclude that Cecil Mack is an employee as defined in Section 2(3) of the Act. (ALJD 2:18-22; 3:5)

Exception No. 5: To the Administrative Law Judge's failure to rely on the testimony of Cecil Mack, which was not discredited, regarding the duties and authority of lieutenants at the Turkey Point facility. (ALJD 11:25-31; 12:8-12).

Exception No. 6: To the Administrative Law Judge's failure to follow the Board's decision in *Wackenhut Corp.*, 345 NLRB 850 (2005), and other Board precedent, with regard to the insufficiency of evidence to establish the supervisory status of lieutenants. (ALJD 14:40-41; 15:1-5)

Exception No. 7: To the Administrative Law Judge's erroneous conclusion that Thomas Frazier and Cecil Mack are statutory supervisors based on evidence of disciplinary authority that was identical to the evidence of disciplinary authority which was found by the Board in *Wackenhut Corp.*, 345 NLRB 850 (2005), to be insufficient to establish that Respondent's lieutenants were statutory supervisors. (ALJD 14:31-15:5)

Exception No. 8: To the Administrative Law Judge's erroneous conclusion that there is evidence to establish that lieutenants are statutory supervisors based on

their involvement in discipline short of discharge purportedly issued without the necessity of consulting with or obtaining approval from higher managers. (ALJD 15:1-5)

Exception No. 9: To the Administrative Law Judge's failure to rely upon the testimony of Cecil Mack, which was not discredited, that lieutenants were not involved in making decisions with regard to discipline and only delivered discipline to security officers. (ALJD 11:29-31)

Exception No. 10: To the Administrative Law Judge's failure to find that there is insufficient evidence to establish a direct link between performance evaluations of security officers that are prepared by lieutenants and promotions (or other employment actions). (ALJD 8:26-38, 45; 9:14; 13:43; 14:23-28).

Exception No. 11: To the Administrative Law Judge's erroneous reliance in making his supervisory determination on performance evaluations of security officers which are prepared by lieutenants. (ALJD 14:23-28)

Exception No. 12: To the Administrative Law Judge's failure to consider unrefuted evidence that bargaining unit security officers evaluated the performance of lieutenants, including Frazier and Mack. (ALJD 14:24-27)

Exception No. 13: To the Administrative Law Judge's erroneous conclusion that lieutenants exercise independent judgment in transferring security officers from one post assignment to another. (ALJD 15:16-19)

Exception No. 14: To the Administrative Law Judge's erroneous conclusion that lieutenants have authority to responsibly direct the work of security officers. (ALJD 15:33-34)

Exception No. 15: To the Administrative Law Judge's erroneous reliance on evidence of lieutenant pay, benefits, training, required attendance at management meetings, and the number of security officers assigned to each captain, in the absence of evidence of actual statutory supervisory authority. (ALJD 15:36-43)

Exception No. 16: To the Administrative Law Judge's reliance on the general, conclusionary, and self-serving testimony by Project Manager Michael Mareth regarding the duties and authority of lieutenants at the Turkey Point plant. (ALJD 6:45-8:43)

Exception No. 17: To the Administrative Law Judge's failure to find and conclude that Respondent indefinitely suspended and discharged Thomas Frazier for engaging in protected concerted activity and to discourage employees from engaging in these or other concerted activities. (ALJD 2:21-22; 3:4-7).

Exception No. 18: To the Administrative Law Judge's failure to find and conclude that Respondent indefinitely suspended and discharged Cecil Mack for engaging in protected concerted activity and to discourage employees from engaging in these or other concerted activities. (ALJD 2:21-22; 3:4-7).

Exception No. 19: To the Administrative Law Judge's failure to conclude that, as part of the remedy for its unfair labor practices, Respondent is liable for reimbursing Thomas Frazier and Cecil Mack for any excess federal income taxes owed upon receiving a lump sum backpay award covering more than one year of backpay. See *WEBCO Industries, Inc.*, 340 NLRB 10 (2003).

Exception No. 20: To the Administrative Law Judge's failure to conclude that, as part of the remedy for its unfair labor practices, Respondent must notify the Social Security Administration as to the appropriate periods in which to allocate backpay as set forth in the Internal Revenue Service Publication 957 – Reporting Back Pay and Special Wage Payments to the Social Security Administration.

Exception No. 21: To the Administrative Law Judge's failure to provide for all the other relief that is just and proper to remedy the unfair labor practices.

Accordingly, it is respectfully requested that the Board modify the Administrative Law Judge's Decision in the above respects, as further explained in the accompanying brief.

DATED at Miami, Florida this 24th day of August, 2011.

Respectfully submitted,



Shelley B. Plass
Counsel for the Acting General Counsel
National Labor Relations Board, Region 12
Miami Resident Office
51 S.W. 1st Avenue, Room 1320
Miami, FL 33130
Shelley.Plass@nrlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of Acting General Counsel's Exceptions to the Administrative Law Judge's Decision and Recommended Order in the matter of G4S Regulated Security Solutions, A Division of G4S Secure Solutions (USA) Inc., f/k/a The Wackenhut Corporation, Cases 12-CA-26644 and 12-CA-26811 was served electronically upon the following individuals on this 24th day of August, 2011.

By electronic filing:

Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

By electronic mail:

Fred Seleman, Esq.
Managing Counsel – Labor Relations
G4S Regulated Security Solutions,
A Division of G4S Secure Solutions (USA) Inc.
f/k/a The Wackenhut Corporation
1395 University Boulevard
Jupiter, FL 33458
Fred.seleman@usa.g4s.com

Thomas Frazier
29925 S.W. 166th Court
Homestead, Florida 33033
tomfrazier@gmail.com

Cecil Mack
16900 S.W. 105th Avenue
Miami, Florida 33157
Cecilmack3@gmail.com



Shelley B. Plass
Counsel for the Acting General Counsel
National Labor Relations Board, Region 12
51 S.W. 1st Avenue, Room 1320
Miami, FL 33130
Tel. (305) 530-7029
Fax (305) 536-5320
E-mail shelley.plass@nlrb.gov