

Erick J. Becker  
THE AMERICAN CONSULTING GROUP, INC.  
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(949) 452 -1840

UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
OS TRANSPORT, LLC AND HCA	)	
MANAGEMENT, INC.,	)	
	)	
Respondent,	)	
	)	
and	)	NLRB Case Nos. 32-CA-25100
	)	32-CA-25399
	)	32-CA-25490
TEAMSTERS LOCAL NO. 350,	)	
INTERNATIONAL BROTHERHOOD OF	)	
TEAMSTERS, CHANGE TO WIN,	)	
	)	
Charging Party	)	

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RESPONDENT’S EXCEPTIONS TO THE DECISION OF  
THE ADMINISTRATIVE LAW JUDGE

I. INTRODUCTION

On August 15, 2011, Administrative Law Judge Gerald M. Etchingham (hereinafter “the ALJ”) issued a Decision and Order in the above-captioned matter. Pursuant to Section 102.45 of the National Labor Relation Board’s Rules and Regulations, the Employer hereby files its Exceptions to portions of the Decision and Order (citations to the Decision and Order shall be referred to as “ALJD, p. \_\_, lines \_\_).

## II. EXCEPTIONS

1. **ALJD p. 10, lines 4-7** The ALJ's finding that Respondent changed the terms and conditions and payment of wages of the prounion drivers, which is not supported by the evidence in the record.
2. **ALJD p. 10, lines 7-11** The ALJ's findings that Respondent decreased wages and work assignments for union supporters, reassigned more lucrative routes to nonunion drivers, eliminated Saturday work for union supporters, and delayed recall of union supporters when their trucks broke down, which are not supported by the evidence in the record.
3. **ALJD p. 10, lines 11-14** The ALJ's findings that Respondent gave non-union drivers with more work assignments and increases in their total wages exceeding the pay of union supporters, which are not supported by the evidence in the record.
4. **ALJD p. 10, lines 14-18** The ALJ's findings that the compensation for union drivers decreased in the timeframe of May-November 2010 when compared to 2009 and compared to non-union driver Victor Vargus (Vargus), which are not supported by the evidence in the record.
5. **ALJD p. 10, lines 44-46** The ALJ's finding that Alberto Pisano's (Pisano) average workload dropped from 5-7 loads per day to 2-4 loads per day after Respondent became aware of his union activities, which is not supported by the evidence in the record.
6. **ALJD p. 10, lines 46-48** The ALJ's finding that Pisano drove the Potrero Hills route 2-3 times a month prior to his union activity, but was assigned the route 10-12 times per month after his union activity became known, which is not supported by the evidence in the record.
7. **ALJD p. 11, line 32** The ALJ's failure to assess the evidence and make factual findings regarding the allegations in the Complaint regarding reassignment of work, decrease in wages

and loss of Saturday work for drivers Enedino Millan, Ceferino Urias Velasquez, Jose Velasquez, Efrain Gutierrez Najera, Jose Urias, and Primitivo Guzman.

8. **ALJD p. 11, lines 33-35** The ALJ's finding that before May 7, 2010, if a driver's truck was being repaired, he would immediately be given a spare truck or the truck would quickly be repaired by a mechanic so the driver would not miss work, which is not supported by the evidence in the record.

9. **ALJD p. 11, lines 35-38** The ALJ's finding that after May 7, 2010, the usual practice of immediately providing a spare truck when a driver's truck was under repair ended, which is not supported by the evidence in the record.

10. **ALJD p. 11, lines 38-43** The ALJ's finding that driver Primitivo Guzman (Guzman) missed work while his truck was being repaired, even though spare trucks were available, which is not supported by the evidence in the record.

11. **ALJD p. 12, lines 13-15** The ALJ's finding that before May 7, 2010, a truck needing repair would be out of service for no more than a day with ample supply of spare trucks, which is not supported by the evidence in the record.

12. **ALJD p. 12, lines 14-15** The ALJ's finding that Reynoso, Pisano and Marquez had repairs of their trucks delayed and were not provided spare trucks because they signed a protest letter, which is not supported by the evidence in the record.

13. **ALJD p. 12., line 16** The ALJ's failure to assess the evidence and make factual findings to support his conclusion that Guzman's hours or earnings were reduced by Respondent, including missed work due to delays in repairing his truck or failure to provide a spare truck.

14. **ALJD p. 12, lines 38-39** The ALJ's finding that Felipe Campos (Campos) agreed to contact Marquez as soon as his truck was repaired, which is not supported by the evidence in the record.

15. **ALJD p. 12, lines 40-43** The ALJ's finding that Campos and Marquez agreed to communicate through Pisano while Marquez was waiting for his truck to be repaired, which is not supported by the evidence in the record.
16. **ALJD p. 13, lines 19-23** The ALJ's finding that nothing changed for Marquez' unrepaired truck according to Campos until October 15, which is not supported by the evidence in the record.
17. **ALJD p. 14, lines 27-30** The ALJ's finding that Hilda Andrade (Andrade) told Christina Bettancourt (Bettancourt) that she did not want to employ Pisano anymore, which does not accurately reflect the testimony that Andrade said she didn't want to employ him because he had "too many points," (Tr. at 1115), and fails to address this evidence.
18. **ALJD p. 16, lines 21-24** The ALJ's finding discounting the credibility of Urias Velasquez, which contradicts with his previous crediting of his testimony and endorsement of his credibility on page 9, n. 22, lines 51-53.
19. **ALJD p. 29, lines 1-4** The ALJ's conclusion that Sencion, Sr. told Reynoso that he would not rehire a former employee, Julio Escobar, because of his union support, which is not supported by the evidence in the record.
20. **ALJD p. 30, lines 7-11** The ALJ's conclusion that Respondent violated the Act by intentionally reassigning and reducing the work hours and/or number of assigned loads for ten of its employees in retaliation for their protected concerted activities, which is not supported by the evidence in the record.
21. **ALJD p. 33, lines 33-35** The ALJ's finding that the requirement that Andrade testify in a Board proceeding on September 13 and 14 was evidence of unlawful motivation to terminate Marquez.

22. **ALJD p. 33, lines 34-38** The ALJ's finding of disparate treatment of Marquez by terminating him for job abandonment, based on a comparison with Respondent's treatment of Reynoso and Guzman, which misconstrues the meaning of "disparate treatment" as evidence of discriminatory intent.

23. **ALJD p. 33, lines 39-44** The ALJ's finding that Andrade's failure to investigate Marquez' absence was evidence of discriminatory intent. This finding misconstrues Board precedent concerning failure to investigate and is not supported by the evidence in the record.

24. **ALJD p. 33, lines 45-48** The ALJ's conclusion that Respondent did not show that it would have terminated Marquez in the absence of his Union support and protected activities.

25. **ALJD p. 34, lines 30-32** The ALJ's conclusion that Respondent did not show that it would have fired Pisano absent his union and protected activity.

26. **ALJD p. 34, lines 38-40** The ALJ's finding that neither Andrade nor Sencion, Sr. denied having a copy of the CHP report on Pisano's accident in April 2009, which is not supported by the evidence in the record.

27. **ALJD p. 34, n.66, lines 48-50** The ALJ's finding that Pisano's testimony that union supporting drivers lost their Saturday hours as well as the better weekday routes was consistent with Respondent's work records. The work records for some of the prounion drivers do not reflect any loss in Saturday hours or change in routes.

28. **ALJD p. 35, lines 15-20** The ALJ's finding that other drivers with poor driving records were refused coverage by insurance companies but were covered as probationary employees at Andrade's insistence, which was the basis for the ALJ's conclusion that Andrade was not believable when she asserted that she did not want Pisano to remain employed due to his poor driving record. This finding and conclusion are not supported by the evidence in the record.

29. **ALJD p. 35, lines 32-34** The ALJ’s finding that Hilda Andrade (Andrade) told Christina Bettancourt (Bettancourt) that she did not want to employ Pisano anymore, which does not accurately reflect the testimony that Andrade said she didn’t want to employ him because he had “too many points,” (Tr. at 1115), and fails to address this evidence.

30. **ALJD p. 35, line 48 – p. 36, line 1** The ALJ’s finding that Andrade purposely concealed the fact that Pisano could have remained eligible for coverage and failed to provide the CHP report to the insurance broker, which is not supported by the evidence in the record.

31. **ALJD p. 36, lines 2-5** The ALJ’s conclusion that Respondent did not show that it would have terminated Pisano in the absence of his union leadership and protected concerted activity.

32. **ALJD p. 36, lines 29-32** The ALJ’s conclusion that Respondent violated Sections 8(a)(1) and 8(a)(3) by reducing employees’ work assignments and hours for supporting the Union or engaging in protected concerted activities.

33. **ALJD p. 36, lines 34-37** The ALJ’s conclusion that Respondent violated Sections 8(a)(1) and 8(a)(3) by permanently terminating employees because they supported the Union or engaged in protected concerted activities.

34. **ALJD p. 36, line 50 – p. 37, line 3** The ALJ’s remedy of reinstatement and make whole for earnings and benefits for Marquez and Pisano.

35. **ALJD p. 37, lines 9-17** The ALJ’s remedy of restoration of routes, hours, Saturday work,

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and wages and make whole for losses for Reynoso, Gutierrez, Marquez, Pisano, Salazar,  
Guzman, Gusman, Velasquez, Urias and Millan.

DATED: September 12, 2011

Respectfully submitted,

THE AMERICAN CONSULTING GROUP, INC.

A handwritten signature in black ink, appearing to read 'Erick J. Becker', with a long horizontal flourish extending to the right.

Erick J. Becker  
CEO

**PROOF OF SERVICE BY ELECTRONIC MAIL**

I, Erick Becker, am a resident of Orange County, over eighteen years of age, and I am not a party to this action. My business address is:

23361 Madero, Suite 220  
Mission Viejo, California 92692

On September 12, 2011, I served the RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE and RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE in Case Nos. 32-CA-25100, 32-CA-25399, and 32-CA-25490 on the following parties to this action by sending a file including the documents by electronic mail to the following address:

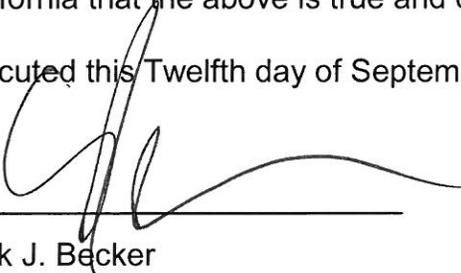
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this Twelfth day of September, 2011 at Mission Viejo, California.



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Erick J. Becker