

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

<p>In the Matter of:</p> <p>MCCLAIN & CO., INC.,</p> <p>Respondent,</p> <p>and</p> <p>CRAIG H. LIVINGSTON, An Individual,</p> <p>Charging Party</p>	<p>Case No. 22-CA-29792</p>
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RESPONDENT MCCLAIN & COMPANY, INC.'S EXCEPTIONS TO ADMINISTRATIVE
LAW JUDGE ELEANOR MACDONALD'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent McClain & Company, Inc. (the "Company" or "Respondent") makes the following exceptions to the October 17, 2011 decision of Administrative Law Judge Eleanor MacDonald ("ALJ"):

1. Respondent takes exception to the ALJ's finding that the employees who made complaints about work assignments were engaged in protected concerted activities. (ALJD¹ 17:4). Contrary to the ALJ's finding although some employees made individual complaints, none of the employees engaged in any conduct relating to complaints about work assignments with the object of initiating or inducing or preparing for group action or that it had some relation to group action in the interest of the employees. The ALJ's conclusions are not supported by the record evidence and applicable Board law.

2. Respondent takes exception to the ALJ's finding that Ladd's casual comment that if the men organized, the owner of the Company might close and move the operation, is evidence of anti-union animus on the part of the company. (ALJD 17:35) The ALJ's conclusions are not supported by the record evidence and applicable Board law.

3. Respondent takes exception to the ALJ's finding that "[i]t is clear that Ladd knew all about the union meeting when he helped decide who was to be laid off." (ALJD 19:8) The record is devoid of any evidence of when Ladd learned about the meeting.

4. Respondent takes exception to the ALJ's finding that "Respondent's managers in Lyndhurst and in Virginia were aware of the union meeting when the layoff list was compiled." (ALJD 19:15) The record is devoid of any evidence that any of Respondent's managers in Lyndhurst learned of the union meeting prior to September 9, 2010. The record also is devoid of any evidence of when Respondent's managers in Virginia first learned about the meeting.

¹ We abbreviate references to the Administrative Law Judge Decision as "ALJD," references to the hearing transcript as "Tr.," and references to the exhibits as "Ex. GC" or "Ex. R" (for General Counsel exhibit or Respondent exhibit, respectively).

5. Respondent takes exception to the ALJ's finding that Respondent did not prepare a layoff list for the reason that work was slowing down. (ALJD 18:4) The ALJ's finding is not supported by the record evidence.

6. Respondent takes exception to the ALJ's finding that Respondent selected Casiano for layoff because he attended the union meeting with Local 210 and, thus, Respondent violated Section 8(a)(3) and (1) of the Act. (ALJD 21:11-12) The ALJ's conclusions are not supported by the record evidence and applicable Board law because the record is devoid of any evidence that Respondent knew that Casiano attended a meeting with a union at the time of the layoff or at any specific time thereafter.

7. Respondent takes exception to the ALJ's finding that Respondent's assertion that Casiano was selected for layoff because he did not want to continue as Ladd's helper in the yard is a pretext. (ALJD 21:5) The ALJ's finding is not supported by the record evidence.

8. Respondent takes exception to the ALJ's finding that Respondent selected Brattoli for layoff because he attended a meeting with Local 210 and, thus, Respondent violated Section 8(a)(3) and (1) of the Act. (ALJD 21:50) The ALJ's conclusions are not supported by the record evidence and applicable Board law because the record is devoid of any evidence that Respondent knew that Brattoli attended a meeting with a union at the time of the layoff or at any specific time thereafter.

9. Respondent takes exception to the ALJ's finding that "it is clear that Brattoli stormed into Ferrer's office after he was laid off" so this could not have been the cause of his layoff. (ALJD 14:29; 21:30) The ALJ's finding is not supported by the record evidence.

10. Respondent takes exception to the ALJ's finding that Ladd's statement to Bruno on September 7, 2010 about a union meeting created the impression that the employees'

protected concerted activities were under surveillance. (ALJD 22:13) The ALJ's conclusions are not supported by the record evidence and applicable Board law.

11. Respondent takes exception to the ALJ's finding that on July 21, 2010 Respondent threatened its employees with loss of jobs if they continued their protected concerted activities of complaining about their work assignments and, thus violated Section 8(a)(1) of the Act. (ALJD 17:25) The ALJ's conclusions are not supported by the record evidence and applicable Board law.

12. Respondent takes exception to the ALJ's finding that on August 30, 2010 Respondent threatened its employees with loss of jobs if they continued their protected concerted activities of complaining about their work assignments and, thus violated Section 8(a)(1) of the Act. (ALJD 17:25) The ALJ's conclusions are not supported by the record evidence and applicable Board law.

13. Respondent takes exception to the ALJ's finding that Ladd's question to Bruno on September 7, 2010 regarding the next union meeting constituted a coercive interrogation of Bruno by Ladd. (ALJD 22:20) The ALJ's conclusions are not supported by the record evidence and applicable Board law.

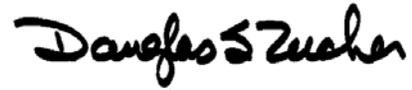
14. Respondent takes exception to the ALJ's finding that Pasquale's questions to Bruno on September 13, 2010 were coercive. (ALJD 22:30) The ALJ's conclusions are not supported by the record evidence and applicable Board law.

15. Respondent takes exception to the ALJ's finding that Pasquale's conversation with Bruno on September 13, 2010 amounted to a coercive interrogation. (ALJD 22:30) The ALJ's conclusions are not supported by the record evidence and applicable Board law.

Respondent submits a brief herewith in support of its exceptions.

Respectfully submitted,

Bauch Zucker Hatfield LLC

A handwritten signature in black ink that reads "Douglas S. Zucker". The signature is written in a cursive, slightly slanted style.

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