

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, DC**

JASON LOPEZ'S PLANET EARTH
LANDSCAPE, INC.,

Respondent,

and

Cases 31-CA-29817
31-CA-30010

LABORERS PACIFIC SOUTHWEST
REGIONAL ORGANIZING COALITION,
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA,

Charging Party.

**EXCEPTIONS OF COUNSEL FOR THE ACTING GENERAL COUNSEL
TO THE DECISION AND RECOMMENDED ORDER
OF THE ADMINISTRATIVE LAW JUDGE
AND BRIEF IN SUPPORT OF EXCEPTIONS**

COMES now Counsel for the Acting General Counsel, and pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, respectfully files the following exceptions to the Decision and Recommended Order of Administrative Law Judge Gerald M. Etchingham.

Counsel for the Acting General Counsel's exceptions pertain to what appear to be minor omissions in the Remedy, Order, and Appendix sections of the Administrative Law Judge's Decision.

In the Decision, Judge Etchingham properly concluded that Jason Lopez’s Planet Earth Landscape, Inc. (“Respondent”) violated Section 8(a)(5) and (1) of the Act “[b]y laying off employees [Ruben] Olguin and [Omar] Mota on September 17 and 20, 2010, respectively, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct.” (ALJD 22:5-8). The appropriate remedy following such a conclusion is to order Respondent to cease and desist from implementing changes to wages, hours, or other terms and conditions of employment without first giving the Union notice and an opportunity to bargain. *Alta Vista Regional Hospital*, 355 NLRB No. 43, slip op. at 3-6 (June 11, 2010) (order subsequently adopted by the Board in 357 NLRB No. 36, slip op. at 3 (August 2, 2011)); *Consolidated Printers, Inc.*, 305 NLRB 1061, 1069-1070 (1992); *Ebenezer Rail Car Services, Inc.*, 333 NLRB 167, 173 (2001). The Decision did not, however, contain any such order.

Judge Etchingham also properly found that Respondent violated Section 8(a)(1) of the Act “[b]y giving employee Olguin and his co-workers money on June 18, 2010 if they refrained from union organizational activities.” (ALJD 22:23-24). The appropriate remedy following such a conclusion includes the posting of a Notice to Employees which includes a statement that Respondent will not “give employees money or other benefits to influence them in regard to their union activities.” *Bourne Co.*, 144 NLRB 805, 810 (1963). The Appendix’s Notice to Employees, however, did not contain such language.

Accordingly, Counsel for the Acting General Counsel makes these six related exceptions:

Exception No. 1. The Remedy portion of the Decision (ALJD 22:30-23:10) fails to include an appropriate order to remedy the Section 8(a)(5) violation.

Counsel for the Acting General Counsel respectfully requests that the Board find that the appropriate remedy for the Section 8(a)(5) violation found by Judge Etchingham is to order Respondent to notify the Union before implementing changes to wages, hours, or other terms and conditions of employment, and, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

Exception No. 2. The Recommended Order of the Decision (ALJD 23:15-25:8) fails to order Respondent to remedy the Section 8(a)(5) violation by ceasing and desisting from making unilateral changes to terms and conditions of employment.

Counsel for the Acting General Counsel respectfully requests that the Board order Respondent to cease and desist from unilaterally implementing changes to wages, hours, or other terms and conditions of employment, including laying off employees, without first giving the Union notice and an opportunity to bargain.

Exception No. 3. The Recommended Order of the Decision (ALJD 23:15-25:8) fails to order Respondent to take the affirmative action necessary to remedy the 8(a)(5) violation.

Counsel for the Acting General Counsel respectfully requests that the Board order Respondent to take the following affirmative action: before implementing any changes to wages, hours, or other terms and conditions of employment, including laying off

employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

Exception No. 4. The Notice to Employees in the Appendix of the Decision fails to include statements to address Respondent’s Section 8(a)(5) violation.

Counsel for the Acting General Counsel respectfully requests that the Board amend the Notice to Employees to include the following statements to address the Section 8(a)(5) violation consistent with *Alta Vista Regional Hospital*, 355 NLRB slip op. at 6: “WE WILL NOT unilaterally change wages, hours, and other terms and conditions of employment of employees in the unit consisting of all full-time and regular part-time landscaping employees employed by us in all counties within the State of California without first giving notice and an opportunity to bargain about such changes to the Union;” and “WE WILL, before implementing any changes to wages, hours, or other terms and conditions of employment, including laying off employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees.”

Exception No. 5. The Notice to Employees in the Appendix of the Decision fails to include a statement to address Respondent’s “giving employee Olguin and his co-workers money on June 18, 2010 if they refrained from union organizational activities.” (ALJD 22:23-24).

Counsel for the Acting General Counsel respectfully requests that the Board amend the Notice to Employees to include the following statement, consistent with

Bourne Co., 144 NLRB at 810, to address Respondent’s 8(a)(1) violation noted above:

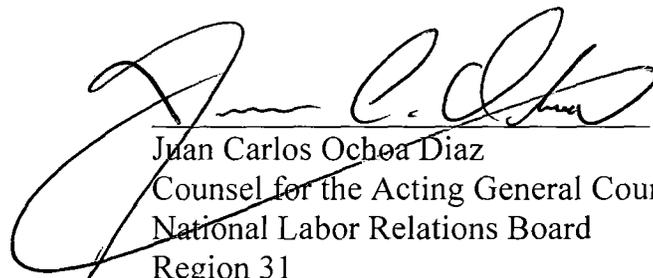
“WE WILL NOT give employees money or other benefits to influence them in regard to their Union activities.”

Exception No. 6. The Notice to Employees in the Appendix of the Decision spells employee Olguin’s first name incorrectly.

Counsel for the Acting General Counsel respectfully requests that the Board amend the Notice to Employees to reflect the proper spelling of employee Olguin’s name as Ruben Olguin Leyva – his first name is currently misspelled “Rubin” – wherever his name appears. *See* Tr. 192:5.

Dated at Los Angeles, California, this 22nd day of December, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Juan Carlos Ochoa Diaz', is written over a horizontal line. The signature is fluid and cursive.

Juan Carlos Ochoa Diaz
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Re: Jason Lopez' Planet Earth Landscape, Inc.
Case Nos.: 31-CA-29817 and 31-CA-30010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **EXCEPTIONS OF COUNSEL FOR THE ACTING GENERAL COUNSEL TO THE DECISION AND RECOMMENDED ORDER OF THE ADMINISTRATIVE LAW JUDGE AND BRIEF IN SUPPORT OF EXCEPTIONS** was served on the 22nd day of December, 2011:

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