

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

**FORT DEARBORN COMPANY,
Respondent**

and

Case 13-CA-46331

**DISTRICT COUNCIL FOUR, GRAPHIC
COMMUNICATIONS CONFERENCE OF
THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS,
Charging Party**

**RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

In accordance with Section 102.46 of the Board's Rules and Regulations, Respondent files the following exceptions to the November 30, 2010 decision of Administrative Law Judge Arthur J. Amchan (the "ALJ").¹

Exception 1:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether the Regional Director improperly ordered resumed processing of the instant case after deferring it to arbitration.
- ii. That part of the ALJ decision to which objection is made:
 - (a) The ALJ's finding that Respondent did not cite any binding authority for the proposition that the Regional Director improperly ordered resumed processing of the instant case after deferring it to arbitration. (ALJ, pp. 1-2)
 - (b) The ALJ's finding that "the case is properly before me." (ALJ, p. 2)
 - (c) The ALJ's finding that *United Technologies*, 268 NLRB 557 (1984) "is completely irrelevant to the instant case." (ALJ, p. 2, footnote 1)
- iii. (R Exs 1-3; GC Exs 1j, 1o, 6)

¹ References herein to the ALJ's decision, the transcript of record of the hearing held before the ALJ on October 13 and 14, 2011, and exhibits introduced at that hearing by Respondent, General Counsel and the Charging Party shall be made, respectively, as follows: "ALJ, p. ___" "Tr. ___" "R Ex. ___" "GC Ex ___" and "CP Ex ___"

- iv. *United Technologies* and the terms of the Regional Director's letter of deferral mandate that, because the Charging Party declined to have the grievances arbitrated, the Regional Director erred in ordering the resumed processing of the instant case.

Exception 2:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether the case should be dismissed because the Charging Party declined to have grievances arbitrated after the case was deferred to arbitration.
- ii. That part of the ALJ decision to which objection is made:
 - (a) The ALJ's finding that Respondent did not cite any binding authority for the proposition that the case should be dismissed. (ALJ, pp. 1-2)
 - (b) The ALJ's finding that "the case is properly before me." (ALJ, p. 2)
 - (c) The ALJ's finding that *United Technologies*, 268 NLRB 557 (1984) "is completely irrelevant to the instant case." (ALJ, p. 2, footnote 1)
- iii. (R Exs 1-3; GC Exs 1j, 1o, 6)
- iv. *United Technologies* and the terms of the Regional Director's letter of deferral mandate that, because the Charging Party declined to have the grievances arbitrated, the case must be dismissed.

Exception 3:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether there is support in the record for Robert Kester's estimate that Marcus Hedger and Peter Schmidt walked through the plant for about 50 minutes.
- ii. That part of the ALJ decision to which objection is made:
 - (a) The ALJ's finding that there is no support in the record for the testimony of Robert Kester estimating that Hedger and Schmidt walked through the plant for about 50 minutes. (ALJ, p. 4, footnote 7)
 - (b) The ALJ's finding that Kester's "investigation, if anything, corroborates Hedger's testimony as to the brevity of the incident." (ALJ, p. 4, footnote 7)
 - (c) The ALJ's finding that "there is no foundation" for Kester's testimony as to how long Peter Schmidt and Hedger were together inside the plant. (ALJ, p. 7)
 - (d) The ALJ's finding that Respondent has "no credible evidence" to support the assertion that Hedger was away from his press for between 50 minutes to over an hour. (ALJ, p. 7, footnote 12)

- (e) The ALJ's finding that "Respondent's reliance on its assertion that Hedger was away from his press for over an hour and its failure to adequately investigate this concern is another factor on which I rely in concluding that the stated reasons for discharge are pretextual." (ALJ, p. 8)
- (f) The ALJ's finding that "Management's discussion with employees who were present on the evening on August 12, confirmed that Schmidt was in the plant for a very brief time." (ALJ, p. 11)
- iii. (Tr. 119, 129, 144, 170-172, 219, 260, 266, 285; CP Ex 1; Res Ex 10)
- iv. The record fully supports Kester's estimate as to the time Marcus Hedger and Peter Schmidt walked through the plant.

Exception 4:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether the record establishes why Hedger was terminated as opposed to being given a lesser penalty pursuant to Respondent's progressive discipline policy.
- ii. That part of the ALJ decision to which objection is made:
 - (a) The ALJ's finding that the record does not establish why Hedger was terminated as opposed to being given a lesser penalty pursuant to Respondent's progressive discipline policy. (ALJ, p. 4-6)
 - (b) The ALJ's finding that Respondent utterly failed to show why it did not apply its progressive discipline policy to Hedger for violating a policy that was not enforced. (ALJ, p. 8)
- iii. (Tr. 149-319, 320-342; R Ex 10; CP Ex 1)
- iv. The record fully supports Respondent's decision to terminate Hedger rather than give him a lesser penalty.

Exception 5.

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether the record establishes substantial animus on the part of management toward Hedger's lawful activities as a union steward.
- ii. That part of the ALJ decision to which objection is made:

The ALJ's findings that the "record is replete with evidence that establishes substantial animus on the part of management towards [Hedger's activities as a union steward]" and that "the record does establish substantial animus towards Hedger's activities in general as a union steward." (ALJ, p. 6)
- iii. (Tr. 23, 196, 228)

- iv. The record contains no evidence of Respondent's alleged animus toward Hedger's lawful activities as a union steward.

Exception 6.

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether the record establishes any basis for the ALJ's finding that the meeting between Kester and Hedger regarding Respondent's smoking policy occurred in 2009.

- ii. That part of the ALJ decision to which objection is made:

The ALJ's findings that the meeting regarding Respondent's smoking policy occurred in 2009. (ALJ, p. 7)

- iii. (Tr. 44, 45, 226)

- iv. The record establishes that the meeting between Kester and Hedger regarding Respondent's policy occurred in early 2008, not 2009.

Exception 7.

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Robert Schmitt's testimony that he first saw Hedger and Peter Schmidt "a little bit after 8:00 o'clock" is inconsistent with Hedger's testimony.

- ii. That part of the ALJ decision to which objection is made:

The ALJ's findings that the meeting regarding Respondent's smoking policy occurred in 2009. (ALJ, p. 7)

- iii. (Tr. 44, 45, 226)

- iv. The record establishes that the meeting between Kester and Hedger regarding Respondent's policy occurred in early 2008, not 2009.

Exception 8.

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Respondent's stated reasons for Hedger's discharge are pretextual and therefore provide a legitimate basis for concluding that Hedger's termination was discriminatorily motivated and violates the Act.

- ii. That part of the ALJ decision to which objection is made:

- (a) The ALJ's statement that "I conclude that Respondent's stated reasons for Hedger's discharge are pretextual and on this basis conclude that Hedger's termination was discriminatorily motivated and violated the Act." (ALJ, p.8)

- (b) The ALJ's statement that "Respondent's reliance on its assertion that Hedger was away from his press for over an hour and its failure to adequately investigate this concern is another factor on which I rely in concluding that the stated reasons for discharge are pretextual." (ALJ, p. 8)
- iii. (Tr. 149-319, 320-342; R Ex 10; CP Ex 1)
- iv. Respondent's stated reasons for Hedger's discharge are not pretextual and therefore provide no legitimate basis for concluding that Hedger's termination was discriminatorily motivated or violated the Act.

Exception 9:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether the fact that Respondent imposed no discipline on three leadmen who failed to report Hedger's alleged violation of its policy prohibiting unescorted nonemployees through the plant and, after Hedger's discharge, imposed a lesser penalty of one day suspension to employees who allowed a former employee into the plant after being told this was prohibited is sufficient to shift the burden to Respondent to prove that it would have discharged Hedger in the absence of his protected activities.
- ii. That part of the ALJ decision to which objection is made:
 - (a) The ALJ's statement that "I conclude that this evidence is sufficient to shift the burden to Respondent to prove that it would have discharged Hedger in the absence of his protected activities as union steward. (ALJ, p.8)
 - (b) The ALJ's statement that "Respondent's reliance on its assertion that Hedger was away from his press for over an hour and its failure to adequately investigate this concern is another factor on which I rely in concluding that the stated reasons for discharge are pretextual." (ALJ, p. 8)
- iii. (Tr. 149-319, 320-342; R Ex 10; CP Ex 1)
- iv. Respondent's stated reasons for Hedger's discharge are not pretextual and therefore provide no legitimate basis for concluding that Hedger's termination was discriminatorily motivated or violated the Act.

Exception 10:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Hedger truthfully answered all the Company's questions on August 23, 2010 other than the name of his visitor.
- ii. That part of the ALJ decision to which objection is made:

The ALJ's statement that Hedger "truthfully answered all the company's questions on August 23 other than the name of his visitor." (ALJ, p.9)

- iii. (Tr. 77. 182-191, 214-215; R Ex 9)
- iv. The record establishes that Hedger's answers to several of the questions asked of him by Respondent on August 23, 2010 were not truthful.

Exception 11:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Respondent proved its "affirmative defense" that it would have fired Hedger in the absence of its animus towards his activities as a union steward.
- ii. That part of the ALJ decision to which objection is made:
 - a. The ALJ's statement that "I conclude that Respondent has not proved its affirmative defense that it would have fired Hedger in the absence of its animus towards his activities as a union steward." (ALJ, p.9)
 - b. The ALJ's "conclusion that Respondent would not have ignored its progressive discipline policy and fired Marcus Hedger in the absence of its animus towards his activities as union steward." (ALJ, p. 11)
- iii. (Tr. 149-319, 320-342; R Ex 10; CP Ex 1)
- iv. Respondent proved that it would have fired Hedger in the absence of its [nonexistent] animus toward his activities as a union steward.

Exception 12:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Respondent on August 18, 2010 had all the information it needed to investigate whether its confidential business information had been compromised.
- ii. That part of the ALJ decision to which objection is made:
 - a. The ALJ's finding that, on August 18, 2010, "Respondent had all the information it needed to investigate whether its confidential information had been compromised" because it "knew that Hedger had walked through the plant with Peter Schmidt, a member of the Union...had the means to determine where Schmidt went in the plant and how long he was there...[and] already had information sufficient to determine whether Peter Schmidt gained access to confidential business information." (ALJ, p. 9)
 - b. The ALJ's finding that "candid and truthful answers by Hedger on August 18 would not have provided Respondent with any information of which it was not already aware." (ALJ, p. 11)
- iii. (Tr. 149-319, 320-342; R Ex 10; CP Ex 1)

- iv. On August 18, 2010, Respondent did not have all the information it needed to investigate whether its confidential business information had been compromised.

Exception 13:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Respondent's published confidentiality policies are relevant to Hedger's conduct on August 12, 2010.
- ii. That part of the ALJ decision to which objection is made:

The ALJ's finding that "it is unclear how this policy is relevant to Hedger's conduct on August 12, 2010." (ALJ, p. 9)
- iii. (Tr. 164-166, 168; R Exs 6, 7, 8)
- iv. Respondent's published confidentiality policies are clearly relevant to Hedger's conduct on August 12, 2010.

Exception 14:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Respondent violated Section 8(a)(3) and (1) by terminating Marcus Hedger's employment on September 14, 2010.
- ii. That part of the ALJ decision to which objection is made:

The ALJ's Conclusion of Law that "Respondent violated Section 8(a)(3) and (1) by terminating Marcus Hedger's employment on September 14, 2010." (ALJ, p. 11)
- iii. All citations set forth above.

- iv. On August 18, 2010, Respondent did not have all the information it needed to investigate whether its confidential business information had been compromised.

Exception 13:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Respondent's published confidentiality policies are relevant to Hedger's conduct on August 12, 2010.
- ii. That part of the ALJ decision to which objection is made:

The ALJ's finding that "it is unclear how this policy is relevant to Hedger's conduct on August 12, 2010." (ALJ, p. 9)
- iii. (Tr. 164-166, 168; R Exs 6, 7, 8)
- iv. Respondent's published confidentiality policies are clearly relevant to Hedger's conduct on August 12, 2010.

Exception 14:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether Respondent violated Section 8(a)(3) and (1) by terminating Marcus Hedgeer's employment on September 14, 2010.
- ii. That part of the ALJ decision to which objection is made:

The ALJ's Conclusion of Law that "Respondent violated Section 8(a)(3) and (1) by terminating Marcus Hedger's employment on September 14, 2010." (ALJ, p. 11)
- iii. All citations set forth above.
- iv. Respondent did not violate Sections 8(a)(3) or (1) by terminating Marcus Hedger's employment on August 12, 2010.

Exception 15:

- i. Question of procedure, fact, law, or policy to which exception is taken: Whether the Respondent should be required to take the actions mandated by the ALJ in is "REMEDY."
- ii. That part of the ALJ decision to which objection is made:

The ALJ's "REMEDY." (ALJ, pp. 1-12)
- iii. All citations set forth above

- iv. Because Respondent did not violate the Act, the “REMEDY” is unwarranted and inappropriate.

Respectfully submitted,

FORT DEARBORN COMPANY

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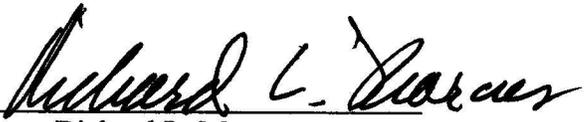
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that true and correct copies of Respondent's Exceptions to the Decision of the Administrative Law Judge attached hereto have been served electronically this 11th day of January, 2012 upon the following parties:

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