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DIRECTV U.S. DIRECTV HOLDINGS LLC

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Region 21

DIRECTV U.S. DIRECTV HOLDINGS)	Case 21-CA-39546
LLC)	
)	
Respondent,)	RESPONDENT'S EXCEPTIONS TO
)	DECISION OF THE
and)	ADMINISTRATIVE LAW JUDGE
)	
INTERNATIONAL ASSOCIATION OF)	
MACHINISTS AND AEROSPACE)	
WORKERS, DISTRICT LODGE 947)	
AFL-CIO)	
)	
Charging Party.)	
_____)	

The Respondent takes Exceptions to the essential conclusions of the Administrative Law Judge ("ALJ") that: (1) The General Counsel met its initial burden under *Wright Line* to establish that anti union sentiment was a motivating factor in Edmonds' discharge; (2) that Respondent failed to satisfy its burden under *Wright Line* to show that Charging Party would have been discharged absent his alleged protected activity; and (3) that the Company Policies at issue were unlawful on their face as they would reasonably tend to inhibit union or protected activity and/or

that the disclaimers adopted by Respondent are insufficient to warrant dismissal of the pertinent provisions of the Complaint.

Respondent takes Exception to certain factual findings or legal conclusions reached by the ALJ including:

1. To the finding that the Installers complained about certain pay and equities, of having to wait in line at Respondent's facility each morning to obtain equipment and the wait in line impacted their earnings (ALJ Decision p.3:1-5).

2. To the characterization of the ALJ that, according to Respondent, Edmonds was discharged for using profanity towards Riverside Operations Manager Freddie Zambrano (ALJ Decision p. 3:11-13).

3. To the finding that Brandon Ojeda claimed that his affidavit was correct or reliable (ALJ Decision p. 3:39-46).

4. To the finding that Noe Gallegos was asked by Dimech to identify employees and supervisors who were supporting the Union at the Rancho Dominguez facility and that Gallegos was offered immunity by Dimech in exchange for his assistance and that Dimech told Gallegos that if the Union came in the site could possibly be closed (ALJ Decision p. 4: Footnote 6).

5. To the finding that during the meeting in May with Dimech and the Riverside employees, that Dimech, in response to Edmonds' complaints about drive time to San Diego represented that he would see what he could do to change that. (ALJ Decision p. 5:10-14).

6. To the finding that Dimech, during his conversation with the Riverside employees turned red in response to comments from Edmonds or otherwise became agitated or angry or made any anti union comments of any sort or nature (ALJ Decision, p.5:26-30; Footnotes 7; 8).

7. To the finding that Edmonds, following the meeting between Dimech and the Riverside employees, met with Edmonds and that Edmonds asked Dimech what he could do about the

issues that Edmonds had raised during the course of the meeting related to compensation, travel time to San Diego and other related issues (ALJ Decision, p.6:1-5).

8. To the finding that Dimech did not deny or contradict the accounts of Edmonds and other employees regarding Dimech's meeting with the Riverside employees in May (ALJ Decision p. 6: 46-48).

9. To the finding that Zambrano told Edmonds that the final discipline for his outburst on July 21, 2010 was a suspension (ALJ Decision p. 8: 20-25, 35-45; ALJ Decision p.9:1-10).

10. To the finding that Zambrano told Edmonds that he would not be terminated and would be returning to work after his suspension (ALJ Decision p. 9:43-45).

11. To the failure of the ALJ to find that Edmonds was suspended on July 21 pending further investigation of the allegations against him and whether Edmonds should be terminated and that such suspension was to facilitate a review the relevant records and to allow Zambrano to consult with his supervisor in Human Resources as a standard procedure in all terminations.

12. To the conclusion of the ALJ that Zambrano was not a credible witness (ALJ Decision, p. 9: Footnote 17).

13. To the failure of the Hearing Officer to find that Edmonds was not a credible witness.

14. To the Hearing Officer's finding that the degree of discipline was entirely within Zambrano's discretion and did not require any review by his supervisor or Human Resources when it came to termination (ALJ Decision p.10: Footnote 20).

15. To the finding of the ALJ that Zambrano suggested that Edmonds apply for the position of Field Supervisor as there was an opening and that the Application dated May 27th signed by Edmonds was in fact an Application for such a position (ALJ Decision, p.11: 26-28).

16. To the finding of the Hearing Officer that credited Edmonds' testimony that Zambrano suggested he apply for the supervisory position (ALJ Decision p. 11: Footnote 23).

17. To the finding that the termination of one John Barrios was unlike and readily distinguishable from Edmonds' termination (ALJ Decision p. 12:1-25).

18. For the failure of the ALJ to find that Edmonds' termination for the use of profanity was consistent with other incidents of termination in Southern California by Respondent for similar infractions.

19. To the finding that the record abundantly shows that Respondent's had antipathy towards unionization and Respondent's awareness of Edmonds' forceful defense of unions in general and his proclivity to speak up in front of employees and managers alike (ALJ Decision p.14:11-14).

20. To the finding that Zambrano warned Edmonds as a result of these pro-union marks by telling him that his work was to be watched (ALJ Decision p.14:13-16).

21. To the legal finding that General Counsel met all of the elements of *Wright Line* justifying the shifting of the burden to Respondent to prove that Edmonds would have otherwise been suspended and then discharged absent his alleged protected concerted and union activities (ALJ Decision p.14:16-20).

22. To the legal finding that Respondent failed to meet its burden of establishing that Edmonds would have been discharged for his July 21 outburst regardless of his protected activity (ALJ Decision p. 14:6-20).

23. To the finding that from the date of the Dimech meeting in May until July 22nd Edmonds had never been disciplined for work performance or any other reason (ALJ Decision p.14:26-29).

24. To the finding that Zambrano's decision not to discipline Edmonds for two disciplinary infractions in June 2010 did not evidence a lack of animus on the part of Zambrano towards Edmonds (ALJ Decision p.14, Footnote 30).

25. To the finding that Zambrano told Edmonds that he would not be terminated for the events of July 21st and that he would be returned to work at the end of his suspension (ALJ Decision p. 14:30-33).

26. To the finding that at the time Zambrano suspended Edmonds for the July 21st incident Zambrano was either aware of Edmonds' prior work history or that the prior work history did not matter and that Zambrano had determined that Edmonds would not be terminated regardless of his work history (ALJ Decision p. 15:5-10).

27. To the finding that someone intervened between July 22nd and 28th to cause Zambrano to change his mind and convert Edmonds' suspension to a termination (ALJ Decision p. 15:14-18).

28. To the ALJ's finding that he did not credit Zambrano's testimony that Zambrano's mind was not made up at the time he suspended Edmonds or that Zambrano ever testified that his review of Edmonds' personnel file was a factor in Zambrano making the decision to discharge Edmonds (ALJ Decision p. 15:14-18).

29. To the Hearing Officer's findings that Respondent failed to establish that Zambrano's termination of Edmonds resulted from a change in mind and/or was motivated by unlawful considerations (ALJ Decision p.15:25-30).

30. That Respondent has failed to show that Edmonds would have been discharged, rather than merely suspended, as a result of his July 21 outburst (ALJ Decision p.15:28-30).

31. That in May, prior to his termination, Zambrano suggested to Edmonds that he apply for an open supervisory position (ALJ Decision p.15: Footnote 31).

32. To the finding that Handbook Provision 3.4 Communications and Representing DirecTV and 4.3.1 Confidentiality, are unlawful on their face as they would reasonably tend to inhibit Union or protected concerted activity by precluding employees from discussing wages, hours and working conditions with employees (ALJ Decision p.18:50-55).

33. To the finding that the Company's policy entitled Employees and Public Relations is unlawful on its face as it will reasonably tend to inhibit Union or protected concerted activity (ALJ Decision p.19: 6-10).

34. To the ALJ's finding that Respondent's Disclaimers and Corrective Action as introduced into evidence regarding these policies are insufficiently specific or would be overlooked by employees regarding the particular provisions and the written documents to warrant a dismissal of these allegations (ALJ Decision p.19:11-15).

35. To the remedy set forth by the Hearing Officer at Pages 19 and 20 of the Decision in whole.

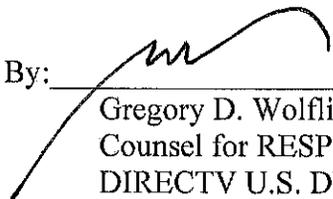
36. To Part 1, A, B and C of ALJ's Order found on Page 20 of the Decision, Lines 20-35.

37. To the ALJ's Order, Parts 2A-2E, found at Page 20 and 21 of the Decision.

38. To the proposed Notice to Employees directed by the ALJ found on the Appendix to the Decision.

Dated: February 6, 2012

WOLFLICK & SIMPSON

By: 

Gregory D. Wolflick, Esq.
Counsel for RESPONDENT,
DIRECTV U.S. DIRECTV
HOLDINGS LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 130 N. Brand Boulevard, Suite 410, Glendale, California 91203.

On February 6, 2012, I served the foregoing document(s) described as:
RESPONDENT'S EXCEPTIONS TO DECISION OF THE ADMINISTRATIVE LAW JUDGE on the interested parties in this action by placing a true copy thereon enclosed in sealed envelope(s) addressed as follows:

Jean C. Libby, Counsel for General Counsel
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XXX **(BY ELECTRONIC SERVICE)** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message, or other indication that the transmission was unsuccessful.

XXX **(BY STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 6, 2012, at Glendale, California

MARGO KAZARYAN

