

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

AMGLO KEMLITE LABORATORIES, INC.

and

CASE: 13-CA-065271

BEATA OSSAK, An Individual

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Board's Rules and Regulations, the Acting General Counsel, through its attorney Cristina Ortega, respectfully files these Exceptions to the March 22, 2012 Decision of the Administrative Law Judge Arthur J. Amchan in this case.¹ In general, the Acting General Counsel excepts to the ALJ's failure to conclude that Respondent violated Section 8(a)(1) of the Act by, inter alia, threatening to terminate, and by terminating its entire workforce, because they engaged in a protected concerted work stoppage to protest their wages; by failing to reinstate 22 of its employees after they agreed to unconditionally return to work; and by accelerating the transfer of machinery and production work from its Illinois facility to a facility in Mexico in retaliation of the employees' engagement in a protected concerted work stoppage. Specifically, the General Counsel excepts to the following:

1. The ALJ's failure to find that on September 20, 2011, the first day of the work stoppage, Respondent Plant Manager Czjakowska threatened the employees that they are fired, sign the resignation papers and go away.

2. The ALJ's failure to find that on September 20, 2011, Plant Manager Czajkowska

¹ In these Exceptions, the Administrative Law Judge will be referred to as "the ALJ", the National Labor Relations Board will be referred to as the "Board," and Anglo Kemlite Laboratories, Inc. will be referred to as "Respondent." Citations to the ALJ's Decision will be referred to as "ALJD" followed by the specific page(s) and line(s) referenced.

threatened the employees that they are going to lose.

3. The ALJ's failure to find that on September 20, 2011, Respondent President Izabela Christian threatened the employees that companies are moving production to Mexico, the owner has four companies on different continents and it would be so easy to make a decision.

4. The ALJ's failure to credit testimony that in the afternoon of September 20, 2011, Respondent Plant Manager Czajkowska told a small group of employees, to include employee Jesse Kopec, "What are you doing here? You are fired. Go away."

5. The ALJ's failure to conclude that Respondent's statements in Exceptions (1) through (4) amounted to independent violations of Section 8(a)(1).

6. The ALJ's failure to credit testimony that Respondent Plant Manager Czajkowska's exchange with the group of employees on September 20, 2011, where Czajkowska told the employees, "What are you doing here? You are fired. Go away," reaffirms that the employees were terminated and not laid off.

7. After properly crediting testimony and finding that Respondent President Christian threatened the group of employees on September 20, 2011, by stating that Respondent Owner Jim Hyland was not "pro-Polish" as he used to be, at ALJD p. 3, ln 5-6, the ALJ's inadvertent failure to conclude this implied threat of discharge as an 8(a)(1) violation.

8. After properly crediting testimony and finding that on September 20, 2011, Respondent Plant Manager Czajkowska threatened the group of employees by stating that Respondent Owner Jim Hyland would tell the managers to "get rid of half of you," at ALJD p. 3, ln 6-7, the ALJ's inadvertent failure to conclude the threat of discharge as an 8(a)(1) violation.

9. The ALJ's failure to find that the evidence supported concluding that Respondent terminated all of its employees on September 20, 2011 after properly crediting testimony and

finding that on the morning of Wednesday, September 21, 2011 Respondent Plant Manager Czajkowska asked employees what they were doing at the plant and that “She may have told them they were fired.” ALJD p. 5, ln. 3-5.

10. The ALJ’s failure to conclude that Respondent violated 8(a)(1) when Respondent Plant Manager Czajkowska told employees on Wednesday, September 21, 2011, “No, you fired yourselves when you walked off the job,” at ALJD p. 5, ln 5-6.

11. The ALJ’s failure to conclude that on Wednesday, September 21, 2011, Respondent Plant Manager Czajkowska’s statement to employees, “No, you fired yourselves when you walked off the job,” at ALJD p. 5, ln 5-6, confirmed that the employees were terminated and not laid off when they engaged in a protected concerted work stoppage on September 20, 2011.

12. The ALJ’s mischaracterization of the facts that involve the resignation forms, at ALJD pg. 3, ln 17-20, given Plant Manager Czajkowska’s admission that she came to the meeting with at least ten resignation forms, threw at least one of the forms on the table, and stated in front of the entire group of employees, “just sign the paper and you can go.”

13. The ALJ’s conclusion at ALJD p. 5, ln 9-12, that supervisors had difficulty contacting employees because employee Kopec advised employees not to answer the telephone despite the acknowledgement of the witness that presented this evidence that she had no difficulty contacting employees by telephone and that she selectively decided which employees to call because it was up to each employee to decide whether they wanted to return to work.

14. The ALJ’s failure to consider and/or conclude that his finding at ALJD p. 5, ln 20-21, that on Friday, September 23, 2011, Respondent’s Plant Manager Czajkowska instructed employees who were seeking to return to work to fill out employment applications confirmed that the employees were terminated and not laid off on September 20, 2011.

15. The ALJ's failure to find that on Friday, September 23, 2011, employees were locked out of Respondent's facility when they attempted to obtain employment applications as instructed by Respondent's Plant Manager Czajkowska.

16. The ALJ's failure to consider and/or conclude that employee Lidia Lasoto's ineligibility for unemployment benefits for the period beginning after October 2, 2011 because she had participated in the work stoppage on September 20, 2011 confirms that the employees were terminated and not laid off.

17. The ALJ's failure to consider and/or conclude that Respondent was interviewing and hiring applicants from outside of the facility after employees had requested on Friday, September 23, 2011, to return to work confirms that the employees were terminated and not laid off because they engaged in a work stoppage.

18. The ALJ's failure to find that on Tuesday, September 27, 2011, after employee Beata Ossak signed an unconditional offer to return to work, Respondent President Izabella Christian told her that she did not know how long the employees would have to wait to be contacted by the company because the company was re-organizing production and moving it to Mexico because of the work stoppage.

19. The ALJ failed to find that Respondent condoned the presence of the employees in Respondent's facility on the first day of the strike.

20. The ALJ's improper use of *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 889 (1st Cir. 1982), *cert denied* 455 U.S. 989 (1982) to analyze whether employees were terminated because of their protected concerted activity. ALJD p. 6, ln 11-25.

21. The ALJ properly found under *Quietflex Mfg. Co.*, 344 NLRB 1055 (2005) that the employees' work stoppage was protected concerted activity, however, the ALJ's reasoning was

flawed with respect to the following specific exceptions:

- a. The ALJ's erroneous finding at ALJD p. 7, ln 23-24, that at no time on September 20, 2011, did Plant Manager Czajkowska tell employees that they were fired or to "get out."
- b. The ALJ's erroneous finding at ALJD p. 8, ln 13-16, that the Respondent did not discharge any employees.
- c. The ALJs erroneous finding at ALJD p. 7, ln 32-35, that on September 21, 2011, Respondent clarified any ambiguity of responding to the employee wage demands.

22. The ALJ's conclusion that Respondent engaged in an accelerated layoff. ALJD p. 9, ln 10-12.

23. The ALJ's failure to conclude that Respondent terminated approximately 94 employees on Tuesday, September 20, 2012, in violation of Section 8(a)(1) of the Act.

24. The ALJ incorrectly analyzed whether the employees were terminated through the Respondent's viewpoint and not from the employees' perspective.

25. After properly finding that Respondent accelerated a transfer of production work to Mexico because of the strike, at ALJD p. 10, ln 12-16, the ALJ's inadvertent failure to conclude that Respondent's transfer of production work in retaliation of the employees' work stoppage was in violation of Section 8(a)(1) of the Act.

26. The ALJ failed to draw an adverse inference due to Respondent's failure to call Margaret Chlipala, Respondent's Product Transfer Coordinator, as a witness.

27. The ALJ properly provided a make-whole remedy for the 22 employees who have not been reinstated since they participated in work stoppage that began on September 20, 2011 but

improperly concluded that the backpay for such employees shall toll for any period after September 20, 2011 for which the Respondent proves at compliance that it would have laid off these individuals for legitimate nondiscriminatory economic reasons. ALJD p. 12, ln 5-9. Backpay should not toll until these employees are offered reinstatement.

28. The ALJ's failure to provide a make-whole remedy for each of the reinstated employees, beginning on the date they were terminated, September 20, 2011, and tolled upon the employees reinstatement date.

29. The ALJ's failure to provide a remedy to restore the production work at Respondent's Bensenville facility and, in particular the work that was transferred to Mexico, in the manner that the production work was allocated prior to the strike.

30. The ALJ's failure in his proposed Order, at ALJD p. 12 and 13, to order Respondent to cease and desist from telling its employees, in retaliation for engaging in a protected concerted strike, that: you are fired; you fired yourself; that you should resign; your work can easily be transferred to our Mexico facility; we can get rid of half of you; and you will lose.

31. The ALJ's failure in his proposed Order, at ALJD p. 12 and 13, to order Respondent to cease and desist from any further threat or other unspecified reprisal against its employees for engaging in activity with other employees regarding wages, hours, and working conditions.

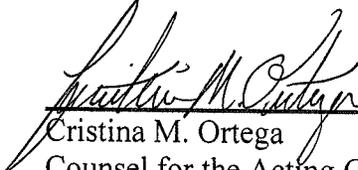
32. Contrary to the ALJ's Proposed Notice, stating that Respondent will not discharge its employees for engaging in concerted activity, the ALJ failed to conclude that Respondent discharged its employees in violation of Section 8(a)(1) of the Act.

33. The ALJ's failure in his proposed Order, at ALJD p. 13, ln 11-24, to order Respondent to read the Notice to Employees by Respondent's President Izabella Christian or, at the Respondent's option, by a Board agent in Christian's presence, with translation available for

Polish-speaking employees.

Dated at Chicago, Illinois, this 2nd day of May 2012.

Respectfully submitted,


electronically filed
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