UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

KAWA SUSHI INC. A.K.A. KAWA SUSHI 8TH AVE INC.
D/B/A KAWA SUSHI RESTAURANT,

and **Case No. 02-CA-039736**

318 RESTAURANT WORKERS UNION

COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BREIF TO RESPONDENT'S EXCEPTIONS AND CROSS EXCEPTIONS

Dated at New York, New York
This 9th Day of November 2012

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I. STATEMENT OF THE CASE

The Administrative Law Judge had accurately set forth the Statement of the Case in his decision.

On October 17, 2012, Respondent timely filed exceptions to Judge Marcionese's findings of facts and law.[1] The Board granted Counsel for Acting General Counsel's extension of time request to file the answering brief and cross exceptions, from October 31, 2012 to November 9, 2012.[2] It is the Acting General Counsel's position that Judge Marcionese's decision was correct as to matters of law and fact, and that the Board should reject Respondent's exceptions and adopt the Decision and Recommended Order in its entirety.

II. STATEMENT OF THE ISSUES

Respondent filed 9 separate exceptions to Judge Marcionese's Decision and Recommended Order. However, Respondent's exceptions can be summarized into the following issues:

1. Whether the ALJ properly concluded that but for Wen Dong Lin's protected concerted activities, he would have been rehired back. (Exception 1)

2. Whether the ALJ properly concluded that Respondent harbored animus against Wen Dong Lin in violation of Section 8(a)(1) when owner's wife Yi Hui threatened Wen Dong Lin with discharge for supporting a co-worker's picketing against the restaurant, and later owner Yi Feng threatened Wen Dong Lin with no rehiring because he joined the picketing. (Exceptions 2, 3, 4, 5 and 6)

3. Whether the ALJ properly concluded that the reasons asserted by Respondent in hiring back Lu but refused to hire back Lin were pretextual. (Exceptions 7, 8 and 9)

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[1] Respondent did not file exception to Judge Marcionese's determination that there was no violation of the Board's *Johnnie's Poultry* decision.

[2] The request for an extension of time was due to Hurricane Sandy that hit the north eastern United States on Sunday October 28, 2012 and the nor'easter that immediately followed on November 7, 2012, which caused power outage throughout New York City.

III. STATEMENT OF THE FACTS

The facts have been completely and accurately set forth in the Administrative Law Judge's Decision ("ALJD") with the exception of two facts. Contrary to the ALJD, the Charging Party did not appeal the Regional Director's dismissal of Tian Wen Ye's discharge. (ALJD 4:39-42) Also, contrary to the ALJD, Yong Feng Wang never denied he made the statement, "you have already picketed at the door, why do I hire you back."[3] (ALJD 8:1-7; Tr. 387:20-25 to 388:1)

IV. ARGUMENT

A. The ALJ properly concluded that but for Wen Dong Lin's protected concerted activities, he would have been rehired back.

Respondent argued, in its Exception 1, that there is no causal link between Wen Dong Lin's picketing activity and the Respondent's decision not to rehire him. Testimonies in the record simply did not support this argument, and the ALJ was correct in so finding. Undisputed evidence show Wen Dong Lin was a plaintiff in a FLSA lawsuit against Respondent and was the only employee who openly supported his co-worker Tian Wen Ye's picket line by joining it when he had no deliveries to make. Evidence also shows Respondent rehired De Quan Lu who was not a plaintiff in the FLSA lawsuit against Respondent and who had openly condemned Tian Wen Ye's picket line.

The assertion that Respondent made the decision not to rehire Wen Dong Lin when he first spoke to Yi Feng on February 3, 2010, does not accurately reflect record evidence. The ALJD discredited Yi Feng after noting that he lied about a basic fact – at first Yi Feng said Wen

[3] Yong Feng Wang is often referred to as Yi Feng in the transcript and in the ALJD. For consistency, Yong Feng Wang will be referred to as Yi Feng.

Dong Lin never asked for his job back, but later admitted that Wen Dong Lin did ask for his job back. (ALJD 12:31-34) In any case, the record shows Yi Feng acknowledged that Wen Dong Lin tried to return to work at Kawa Sushi through various means. (Tr. 394:9-12) Wen Dong Lin called and spoke to him on February 1, 2010. Then Wen Dong Lin visited the restaurant on February 3, 2010. Yi Feng admitted to talking to Wen Dong Lin on February 3, 2010. (Tr. 386) According to Wen Dong Lin, he visited the restaurant two times on February 3, 2010. In the first visit, Lin asked Yi Feng to rehire him. In response, Yi Feng said to him, "After the issue between you and De Quan are resolved, then you can come back." Wen Dong Lin again stated that the judge already made a decision and asked Yi Feng what else he wants him to talk to De Quan about.[4] Yi Feng said he was busy and told him to come back in a few minutes. (Tr. 131, 386) Yi Feng did not say to Wen Dong Lin that he would not be rehired. When Wen Dong Lin returned to the restaurant after having picketed outside with Tian Wen Ye for a few minutes, Yi Feng affirmatively told Wen Dong Lin, for the first time, that he would not be rehired. The reason Yi Feng offered was, "you have already picketed at the door, why do I hire you back." Therefore, by Respondent's own admission, Wen Dong Lin would have been rehired but for his protected concerted activity of joining a co-worker's picket line.

[4] The judge referred to here is the judge who presided when Lin and Lu appeared pursuant to the summons.

B. The ALJ properly concluded that Respondent harbored animus against Wen Dong Lin in violation of Section 8(a)(1) when owner's wife Yi Hui threatened Wen Dong Lin with discharge for supporting a co-worker's picketing against the restaurant, and later owner Yi Feng threatened Wen Dong Lin with no rehiring because he joined the picketing.

Respondent argued, in its Exceptions 2, 3, 4, 5 and 6, the ALJ erred in finding animus. However, the record shows, and the ALJ correctly found, Respondent's own witnesses made admissions of statements that are evidence of animus.

Exceptions 2, 3 and 6[5]

With respect to Exception 6, Respondent appears to argue that Yi Hui is not an agent.[6] However, Respondent did not explain why the ALJ was wrong in his findings and did not cite any cases in support of its position.

Respondent argued that Wen Dong Lin was picketing during his working hours, and an employer is within its right to tell him to get off the picket line and get back to work. While this may be true, Respondent did more than that here. Respondent threatened Wen Dong Lin with discharge if he continued to picket the restaurant. Contemporaneous to when Yi Hui made this statement to Wen Dong Lin and other similar statements to employees, Respondent had other delivery workers leafleting a flyer disparaging Tian Wen Ye when picketing was going on, which were also during those delivery workers' working hours. (GC Exh. 5; Tr. 72:10 to 73:15; 111:24 to 116:21) Furthermore, Respondent's own witness testified that the flow of deliveries was not affected by Wen Dong Lin's participation on the picket line because "there were always people to deliver":

[5] The exceptions will be addressed out of order.

[6] Yi Hui is Xiu Hui Weng, the owner's wife. She is referred to in the transcript and in the ALJD as Yi Hui. For consistency, Xiu Hui Weng is referred to as Yi Hui.

Respondent counsel:	Did [Wen Dong Lin] ever leave you short handed or with insufficient Delivery People because he was picketing?
Yi Hui:	No, no, that won't happen. For lunch, there were always people to deliver because they take turns. They make money and put in their own pocket.

(Tr. 555)

Respondent also attempted to argue that Yi Hui statement's to Wen Dong Lin was no more than to ask an employee to return to work. However, record evidence shows Yi Hui held contempt against the picketing outside the restaurant. (Tr. 555-558) Based on testimonial evidence, Judge Marcionese correctly credited Wen Dong Lin over Yi Hui's denial that Yi Hui said to him, "If you support Tian Wen Ye, then you don't work here." Specifically, the ALJ found Yi Hui not believable based on her demeanor, which was showing open hostility toward Wen Dong Lin. (ALJD 10:37-41) Moreover, the ALJ found Yi Hui basically admitted saying the same thing to a different employee, De Quan Lu. She volunteered that she "joked" with employee De Quan Lu, saying, "Do you want to picket outside? You see. They picket outside. If you want to picket outside, then you don't have to come to work today." De Quan Lu also testified she had said it to him. (Tr. 322, 558) The ALJ correctly noted that this is a threat of discharge to an employee for engaging in protected concerted activities, regardless if it was said to Wen Dong Lin or De Quan Lu. (ALJD 10:30-36) A threat of discharge for engaging in protected concerted activities is evidence of animus. Judge Marcionese correctly found, based on the record evidence and the demeanor of witnesses, that "Yi Feng essentially ratified Yi Hui's statement by making a similar statement at a later date." (ALJD 10:23-24) Yi Feng said to Wen Dong Lin, "You have already picketed at the door, why do I hire you back?"

With respect to Respondent's Exceptions 2 and 3, Respondent argued that the ALJ erred in finding that Yi Feng even uttered the phrase, "You have already picketed at the door, why do I

hire you back?" However, the record evidence supports the ALJ's conclusion and his evaluation of witnesses' demeanor that Yi Feng did make this statement.

Firstly, Respondent relied on Tian Wen Ye's affidavit, which the ALJ did not rely on after noting that Tian Wen Ye testified that he had no present recollection of what he had said in the affidavit because the events were too long ago. Tian Wen Ye's testimony was replete with "I cannot recall" and "it was too long ago". (Tr. 256-276) For this reason, the ALJ did not rely on Tian Wen Ye's affidavit statement when deciding whether Yi Hui was a supervisor even though Tian Wen Ye's affidavit clearly stated that Yi Hui was the one who fired him. (ALJD 5:21-30; GC Exh. 11) When Counsel for the Acting General Counsel asked Tian Wen Ye if there came a time when Wen Dong Lin went back to Kawa Sushi to get his job back, Tian Wen Ye's response was, "I was fired at the time. I don't know." After Counsel for the Acting General Counsel read the relevant paragraph in his affidavit to him in an attempt to refresh his recollection, his response was, "But for a long time I could not know what happened." (Tr. 256 to 275) Therefore, the ALJ was correct in not relying on Tian Wen Ye's affidavit to make any findings of fact.

Secondly, it can be argued that Tian Wen Ye might have attributed the statement to Yi Bo even though it was Yi Feng who made the statement. [7] Or, they both may have made the statement, and Yi Bo merely repeated what Yi Feng said as he ushered Wen Dong Lin out of the door. Regardless, one fact is clear – a statement to this effect was made. The likelihood that Yi Feng made the statement is bolstered by the phraseology Yi Feng tended to use in deciding whether a worker is to be retained. Yi Feng volunteered that when he fired Tian Wen Ye, he told Tian Wen Ye, "You don't deliver the order then why should I keep you?" (Tr. 381:16-17)

[7] Yi Bo is Shin Bo Wen, the younger brother of Yi Hui, who started working at Kawa Sushi in January 2010. (Tr. 305-306)

Contrary to Respondent's argument, to which no case law was cited, Judge Marcionese's reference to the use of similar phraseology is reasonable. See *People's Transp. Service*, 276 NLRB No. 47 (1985) (animus found based on similar phraseology of the terms "union snake" and "snakepit" even though they were used a year apart); See also, *Winer, Sam, Motors, Inc.*, 138 NLRB No. 29 (1962) (similar phraseology relied on in finding animus against employees' organizing for outside union). In addition, the campaign Yi Feng launched against the picketing, including having the delivery workers distribute a flyer entitled "Shame on you! Tian Wen Ye!" that disparaged Tian Wen Ye when Tian Wen Ye was picketing further made stronger the likelihood that Yi Feng made the statement.

Furthermore, Judge Marcionese made clear in his credibility determination that Yi Feng was not believable noting specifically that Yi Feng at first denied Wen Dong Lin asked to be rehired back but then changed his mind later on and testified that Wen Dong Lin did request his job back. (ALJD 8:34-35)

Most importantly, with the exception of Yi Feng, no other witness had the opportunity to sit in the hearing room to listen to all the testimonies during the entire trial; also no witness was able to testify two times, with the second time being after Counsel for the General Counsel had presented all its witnesses. Despite having heard Wen Dong Lin's account of the events on February 3, 2010, Yi Feng never denied he made the statement, "You have already picketed at the door, why do I hire you back?" (Tr. 387:20-25 to 388:1)

Exceptions 4 and 5

Respondent attempted to advance other arguments in Exceptions 4 and 5 to say the ALJ was wrong in finding Respondent held animus in not rehiring Wen Dong Lin.

With respect to Exception 4, Respondent attempted to argue that certain language in the Settlement Agreement that resolved a FLSA lawsuit between Respondent and plaintiffs should somehow lead to the conclusion that Wen Dong Lin and Tian Wen Ye wanted to be fired. This provision allegedly made Respondent liable for $40,000.00 and any other legal remedy if the reinstated plaintiffs were fired without good cause. However, evidence shows Respondent acknowledged Wen Dong Lin and other plaintiffs who returned to work for Respondent in January 2008 were good employees, which undermines Respondent's argument that Wen Dong Lin wanted to be fired. (Tr. 343) There is also no evidence in the record that Wen Dong Lin would bring claims for the $40,000.00 in the settlement agreement. In response to Respondent counsel's questions in this area, no witness remembered or was even aware of this $40,000.00 in the FLSA settlement agreement. (Tr. 136, 630-632) *Even* owner Yi Feng and Yi Hui were unaware of this $40,000.00 provision. (Tr. 84-85, 563) Therefore, the ALJ was correct in not giving much weight to what this settlement language meant to Respondent or the discriminatee Wen Dong Lin.

In Exceptions 4 and 5, Respondent argued that the motive of the Union or employees/discriminatees should have been considered by the ALJ in deciding whether there has been animus on the part of Respondent against employees' protected concerted activities.[8] Whatever the union or employees' motives are in starting its picketing or in filing charges at the NLRB, the ALJ correctly noted that it does not assist him in deciding whether Respondent was unlawfully motivated in its decision to not rehire Wen Dong Lin. (Tr. 238, 284-285)

[8] Exception 5 also raised a nominal issue, namely the timing of the failing of the charge, that was also the subject of exception 8. Therefore, it will be discussed later when exception 8 is addressed.

Furthermore, Respondent's characterization of the record about when the planning for the picketing in front of Kawa Sushi began was inaccurate. According to witness Jin Ming Cao who is a waiter and a Board member on the Board of Chinese Staff and Workers Association ("Association"), as a matter of normal routine, workers who met at the Association shared information about their working conditions at their respective work places by openly discussing problems. Workers were well aware of some of the problems at Kawa Sushi, including the reduction of "side work" and the hiring of two additional delivery staff that resulted in the reduction of delivery work for the existing workers. This discussion began in or about the middle of 2009, before Tian Wen Ye was terminated. When Tian Wen Ye was terminated in October 2009, workers saw Tian Wen Ye's termination as further retaliation against union employees. It is undisputed that after Tian Wen Ye was terminated, workers actively planned and held a press conference to start the picketing in front of Kawa Sushi. (Tr. 244 to 248; 382:2-5; 599:16-24)

Based on strong record evidence, and the ALJ's sound credibility determinations, the ALJ correctly found Respondent's agent Yi Hui and owner Yi Feng made statements in violation of Sections 8(a)(1). These statements are evidence of animus harbored by Respondent and showed Respondent's true motive in refusing to rehire Wen Dong Lin.

C. The ALJ properly concluded that the reasons asserted by Respondent in hiring back Lu but refusing to hire back Lin were pretextual.

Respondent argued that Respondent would have refused to hire Wen Dong Lin regardless of whether Wen Dong Lin picketed. Respondent raised in Exception 7 a defense the ALJ already considered and found to be pretextual. Respondent raised in Exceptions 8 and 9 defenses that were not raised until now, in its exceptions.

Exception 7

In Exception 7, Respondent takes the position that it did not rehire Wen Dong Lin because Wen Dong Lin was the aggressor in the fight. Respondent argued that the ALJ found Wen Dong Lin was somehow less culpable. Contrary to Respondent's assertion, the ALJ did not make any findings as to the culpability of either Wen Dong Lin or De Quan Lu in the fight.[9] Rather the ALJ merely summarized Respondent's victim/aggressor theory, which he found "not entirely supported by Yi Feng's testimony." (ALJD 12:12-28)

While the evidence firmly established that there was a verbal dispute between Wen Dong Lin and De Quan Lu on December 1, 2009, the evidence failed to establish that Wen Dong Lin was the one who initiated the fight or that he used any force. (Tr. 119-128; 173-176; 437-439; 446) In fact, the evidence showed and the ALJ found this is highly disputed, with Wen Dong Lin testifying he did not hit De Quan Lu and all of Respondent's witnesses contradicted themselves or embellished their recollection of what happened. (ALJD 7:4-10) It was abundantly noted in the ALJD that those who testified for Respondent about this fight either succumbed to Respondent counsel's repeated questioning to testify a certain way[10], or they contradicted themselves.[11]

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[9] The ALJ did not make a finding of culpability in the fight because Counsel for the Acting General Counsel only argued that the refusal to rehire Wen Dong Lin is a violation of Section 8(a)(1), not the termination. The ALJ only needs to decide whether Respondent in fact made the decision to rehire one and not the other based this consideration.

[10] Judge Marcionese stated that Xin Jing Weng, the cook whose is also the owner's cousin-in-law, testified, "he did hear them quarrelling, using 'scolding words' toward one another, and that he saw Lu fall down. On *persistent* questioning by Respondent's counsel, he also claimed that he saw Lin hit Lu. This *despite his initial testimony* that he was busy and not really paying much attention to their quarrel." (ALJD p. 7)

[11] Lu himself testified that he declined to be transported to the hospital after he was examined by paramedics and that he only felt sick the next day. But Respondent's witnesses Xin Jing Weng and Yong Di Lin claimed they saw Lu carried out on a stretcher to the ambulance or may have

Furthermore, contrary to Respondent's assertion in its exceptions brief, neither Wen Dong Lin nor De Quan Lu was seen as more culpable than the other *even* in the mind of the owner himself. As Judge Marcionese noted in his decision, "Yi Feng never specifically said that he chose Lu over Lin because he perceived Lu to be a victim of Lin's alleged aggression." (ALJD 12:36-37) The only reason offered by Yi Feng himself while he was on the stand for why he rehired De Quan Lu was because, "I provide[d] him [an] opportunity. He said [he] ha[d] no job." (Tr. 308-309) Additionally, undisputed evidence shows that while De Quan Lu was sent home on the day of the fight, Wen Dong Lin continued to work as until January 11, 2010, more than a month after the fight. (ALJD 6:26) The fact is, Yi Feng admitted he did not see the fight. (ALJD 6:33-34; Tr. 89-91) Yi Feng's actions simply did not fit with Respondent's aggressor-victim defense. Rather, this evidence supports the ALJ's finding that Yi Feng did not care who was right or wrong in the December 1, 2009 fight. This aggressor-victim reason appears to be an after-thought conceived as a defense in this litigation.

Respondent's defense that Wen Dong Lin was instructed to make peace with De Quan Lu, but Wen Dong Lin failed to do so, fails to explain why Wen Dong Lin was not rehired while De Quan was permitted to return.[12] Both Wen Dong Lin and De Quan Lu were told they needed to make peace with each other before they could return to work. Evidence in the record clearly showed Wen Dong Lin wanted to make peace but De Quan Lu refused. It takes two to resolve a dispute but abundant testimonies showed, including De Quan Lu's own admission, De Quan Lu

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been walked to the ambulance, which is more than an exaggeration. (Tr. 125-127, 412-413, 506-507).

[12] Respondent's defense assumed a fact not in evidence, which is that Wen Dong Lin actually hit De Quan Lu. As discussed above and extensively in Counsel for Acting General Counsel's trial brief, Wen Dong Lin did not hit De Quan Lu but Wen Dong Lin did engage in self-defense by raising his arm to block from being attacked when Lu attempted to hit him with a large stapler. (CGC Trial Brief pp. 15–18)

was the one who did not want to resolve their dispute. (ALJD 8:8-9; Tr. 148, 193, 197, 439, 439, 441, and 643) Even assuming Respondent presumed that neither one attempted to resolve the differences between them as the Employer had instructed, De Quan Lu was brought back to work while Wen Dong Lin was not. These facts establish disparate treatment of Wen Dong Lin who openly engaged in protected activity.

Based on the above, the ALJ correctly found Respondent's asserted reasons for its treatment of Wen Dong Lin vis a vis De Quan Lu did not withstand scrutiny, and were "pretext to hide the true motivation behind the Respondent's refusal to reinstate Lin." (ALJD 12: 45-46)

Exception 8

Respondent's Exception 8, also discussed in Exception 5, noted a nominal fact in the record that was never explored during the trial. Respondent appears to draw the conclusion that Charging Party, 318 Restaurant Workers Union ("Union"), had a bad motive because the charge was signed on January 22, 2010, but filed on February 12, 2010, which alleged, among other things, "Since on or about August 2009, the above-referenced employer, through its officers, agents and/or representatives, refused and failed to rehire employee because he engaged in protected concerted and union activities." (GC Exh. 1a) Two days later, on February 14, 2010, De Quan Lu was rehired by Respondent. Respondent argues that these dates somehow should implicate suspicions on the Union and Wen Dong Lin's motive.

Whatever the motive of the Union at the time the charge was filed, the *undisputed fact* in the record shows discriminatee Wen Dong Lin visited Kawa Sushi to request to be rehired and Respondent refused to rehire him. The fact that the Acting General Counsel's case relied on the disparate treatment evidence that De Quan Lu was rehired while Wen Dong Lin was not, even

though they were both let go for engaging in an altercation, does not bolster the Respondent's argument that these dates support the conclusion that there has been bad motives on the part of the Charging Party or the discriminatee Wen Dong Lin which the ALJ should have considered. Not only is Respondent asking the ALJ to speculate as to the motive of the Union and Wen Dong Lin, it is also asking the ALJ to assume as a fact that an ordinary immigrant delivery worker who was not much educated in China and who does not speak English somehow knew the elements necessary to prove a Section 8(a)(1) violation under the National Labor Relations Act.

Only the employer's motive is relevant in deciding whether there was a violation. The Union's motive is simply irrelevant in finding a Section 8(a)(1) violation. Raising this peculiar point in an exception that was never raised before only tended to show this is yet another defense conceived as an afterthought.

Exception 9

Respondent raised for the first time, in Exception 9, a defense that was not raised at trial or in Respondent's post hearing brief – that is, Respondent was trying to avoid problems with De Quan Lu who had hired a lawyer.

Yi Feng never testified that he rehired De Quan Lu because De Quan Lu hired an attorney. Instead, the only testimony that Yi Feng gave for rehiring De Quan Lu was De Quan Lu begged him and he was unemployed. (Tr. 308-309)

Respondent's argument that De Quan Lu was rehired because Respondent was concerned about the financial effect on the business after Lu said he had hired an attorney fails to find support in the record. Just *two days before* De Quan Lu was rehired, the Union filed the charge that was the basis of this litigation at the NLRB. This meant Respondent had to incur legal

expenses immediately in order to respond to the charge. Needless to say, there is the possibility of thousands of dollars in backpay liability. Meanwhile, whether De Quan Lu actually hired a lawyer is unclear. This is not clear in the record and Respondent also never developed this theory during the trial.

Moreover, according to Wen Dong Lin's testimony, on the day he was fired, Yi Feng told him that De Quan Lu had sought out a lawyer to file a case against him, Wen Dong Lin. (Tr. 128-129) So even assuming De Quan Lu did in fact hire a lawyer, which is highly questionable, Respondent would not incur legal expenses since the lawyer was not hired to sue Respondent. Instead, the lawyer was hired to sue Wen Dong Lin. Yet, Respondent was undeterred in rehiring De Quan Lu while refusing to rehire Wen Dong Lin.

No evidence was presented by Respondent that De Quan Lu sustained "serious injuries". There is also no evidence that De Quan Lu threatened Respondent with anything when he was seeking reinstatement. Rather, the evidence clearly showed De Quan Lu appealed to Respondent that he was ready and able to return to work. (Tr. 413-414)

Therefore, Respondent's argument that it is worried about being sued by De Quan Lu and incurring financial burden on the business is simply not supported by evidence. If Respondent was really worried about the financial burden on the business when it is entangled in litigation, then Respondent would have reinstated Wen Dong Lin so as not to let backpay continue to accrue even if it is adamant about litigating this case. Respondent's decision to litigate this case all the way undermines its argument that its worry about being sued is the reason it hired De Quan Lu back but refused to rehire Wen Dong Lin.

Based on the above, the ALJ could not have considered this defense since this defense was never raised until this phase of the litigation. Given the timing of this defense, it is the

position of the Counsel for the Acting General Counsel that this defense is another afterthought conceived to cover the true motive of the Respondent.

V. CONCLUSION AND REMEDY

For the foregoing reasons, Counsel for the Acting General Counsel urges finding that Respondent's contentions in its Exceptions and Brief in Support of Exceptions are without merit. The ALJ properly found that Respondent violated Section 8(a)(1) of the Act by:

1) Threatening employees with discharge if they engaged in protected concerted activity such as picketing;

2) Threatening employees with refusal to rehire because they engaged in protected concerted activity such as picketing; and

3) Refused to rehire Wen Dong Lin because he supported a co-workers' picketing by participating in the picketing.

Accordingly, the ALJ's decision, findings, and conclusions of law and recommended remedy should be adopted.

Dated at New York, New York,
This 9th day of November 2012.

Respectfully submitted,

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