

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

MILUM TEXTILE SERVICES CO.

and

**Cases 28-CA-20898
28-CA-20906
28-CA-20973
28-CA-21050
28-CA-21203**

UNITE HERE!

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

Counsel for the General Counsel (General Counsel), pursuant to Section 102.46 of the Board's Rules and Regulations, files the following exceptions to the Decision of Administrative Law Lana Park [JD(SF) 29-07] (ALJD), issued on October 5, 2007, in the above captioned cases:

1. The Administrative Law Judge's (ALJ) failure to find that Milum Textile Services Co. (Respondent) solicited grievances and promised employees benefits on March 4, 2006, in violation of Section 8(a)(1) of the Act. (ALJD slip op. at p. 5, 14-15) In support of this exception, the General Counsel relies upon the testimony of Zulema Ruiz (Tr. 417, 421, 437), Luz Acosta (Tr. 556-58), Maria Rojas (Tr. 562-66), Evangelina Guzman (Tr. 572-73), and the record exhibits associated therewith. This exception should be granted because the record establishes that Respondent asked employees why they wanted a union and told them that he would resolve their complaints, and the ALJ failed to apply long-standing Board precedent.

2. The ALJ's failure to find that Respondent violated Section 8(a)(1) of the Act by asking employees to report if they were being harassed or pressured into signing with UNITE HERE (Union) on March 4, 2006. (ALJD slip op. at p. 5, 14-15) In support of this exception, the General Counsel relies upon the testimony of Craig Milum. (Tr. 309) This exception should be granted because, contrary to the ALJ's finding that the General Counsel failed to plead this allegation, the General Counsel moved to amend the complaint to add this allegation at the hearing, and the trial ALJ granted the amendment. (GC. 1(wv)); (Tr. 723-34, 1046)

3. The General Counsel excepts to the ALJ's failure to find that Respondent violated Section 8(a)(1) of the Act by threatening employees by telling them it would be futile for them to select the Union as their collective bargaining representative on March 4, 2006. (ALJD slip op. at p. 5, 15) In support of this exception, the General Counsel relies upon the testimony of Zulema Ruiz (Tr. 417, 425), Maria Minjarez (Tr. 507), Luz Acosta (Tr. 556-58), Maria Rojas (562-66), Evangelina Guzman (Tr. 571-73), Craig Milum (Tr. 77), and the record exhibits associated therewith. This exception should be granted because the ALJ erred in finding that the General Counsel's complaint does not properly contemplate this claim. Contrary to the ALJ's finding, the allegation is properly pled in the complaint pursuant to the Board's notice pleading rules, the parties fully litigated this allegation, and Respondent's actions constitute a violation.

4. The ALJ's failure to find that Respondent violated Section 8(a)(1) of the Act by interrogating employees on March 4, 2006. (ALJD slip op. at p. 5, 14) In support of this exception, the General Counsel relies upon the testimony of Zulema Ruiz (Tr. 416-17), Luz Acosta (Tr. 556-58), Maria Rojas (Tr. 562-66), and the record exhibits associated therewith.

This exception should be granted because the ALJ misapplied extant Board law by finding no violation where Respondent asked employees why they wanted to unionize while committing other unfair labor practices.

5. The ALJ's failure to find that Respondent violated Section 8(a)(1) of the Act by continuing to prosecute a federal lawsuit against the Union. (ALJD slip op. at p. 5-6, 16) In support of this exception, the General Counsel relies upon the record exhibits set forth in General Counsel's Exhibits 5, 7-18, 61, 78, 83, 129, 137-39, Respondent's Exhibit 29, and the testimony of Daisy Pitkin (Tr. 878-880, 1693, 2252-54), Patricia Goebel (Tr. 1532-33), and Jaime Chavez (Tr. 1754). This exception should be granted because the ALJ failed to analyze whether the continued prosecution of the lawsuit was objectively baseless.

6. The ALJ's failure to find that Respondent, through the actions of its Production Manager Angela Kayonnie, violated Section 8(a)(1) of the Act by spying on the Union activities of Respondent's employees. In support of this exception, the General Counsel relies upon the testimony of Angela Kayonnie (Tr. 584, 665-67, 690-711, 772, 1837-38, 1878-79), Maria Theresa Velasquez (Tr. 1101-02), Jaime Chavez (Tr. 1747-48), and the record exhibits associated therewith. This exception should be granted because the ALJ failed to properly construe the record evidence and misapplied established Board law by finding that Respondent's watching its employees while they engaged in Union activities did not violate the Act.

7. The ALJ's failure to find that Respondent violated Section 8(a)(1) of the Act by interrogating Zulema Ruiz on June 27, 2006. (ALJD slip op. at p. 6, 15) In support of this exception, the General Counsel relies upon the testimony of Zulema Ruiz (Tr. 414-15, 447), Angela Kayonnie (Tr. 696), Craig Milum (Tr. 149-50, 2091-93), and the record exhibits

associated therewith. This exception should be granted because the ALJ erred in concluding that Respondent's questioning Ruiz about her distribution of Union buttons did not amount to an illegal interrogation.

8. The ALJ's failure to find that Respondent violated Section 8(a)(1) of the Act by attempting to have Union handbillers arrested and/or removed from property in which Respondent held no ownership or otherwise valid property interest. (ALJD slip op. at 7, 17-18) In support of this exception, the General Counsel relies upon the testimony of Craig Milum (Tr. 64, 308-11, 316-24, 326-31, 332-36, 355, 374, 389) and Tony Davis (Tr. 1072-80), and the record exhibits associated therewith. This exception should be granted because the established record, which shows that Respondent contacted law enforcement authorities and caused its customers to do the same cannot be reconciled with Board authorities.

9. The ALJ's failure to find that Respondent, through the actions of its Chief Engineer Raphael Parra in January 2007, created the impression of surveillance in violation of Section 8(a)(1). In support of this exception, the General Counsel relies upon the testimony of Raphael Parra (Tr. 1595-96, 1604, 1611-12, 1652), Evangelina Guzman (Tr. 588), and the record exhibits associated therewith. This exception should be granted because the ALJ lacked any factual basis for finding that Parra's undisputed statement to a Union supporter that a surveillance camera was being installed to keep her "in check" was only a joke.

10. The ALJ's failure to find that Respondent violated Section 8(a)(1) and (3) of the Act by suspending Maria Minjarez, and placing her on probation for 90 days, in October 2006. In support of this exception the General Counsel relies upon the testimony of Maria Minjarez (Tr. 467-69, 471-78), Luz Acosta (Tr. 555-56), Craig Milum (Tr. 126-29, 276-77, 280, 292-98), Jaime Chavez (Tr. 833-35), Angela Kayonnie (Tr. 759-61, 773-77, 797-98), and

the record exhibits associated therewith. This exception should be granted because the ALJ failed to properly evaluate whether the reasons proffered by Respondent were the actual reasons for the discipline or were pretext.

11. The ALJ's failure to find that Respondent violated Section 8(a)(1) and (3) of the Act by suspending Evangelina Guzman, and placing her on probation for 90 days, in December 2006. In support of this exception the General Counsel relies upon the testimony of Evangelina Guzman (Tr. 568, 573-78, 581-83, 618, 624-27, 645-46, 762-63), Maria Martinez (Tr. 1559, 1577), Craig Milum (Tr. 121-25, 130-35, 302-03, 376-77, 398-402, 1993, 2132-34, 2239-42), Angela Kayonnie, (Tr. 763-68, 795-801, 1851-53, 1882-83) and the record exhibits associated therewith. This exception should be granted because the ALJ failed to properly evaluate whether the reasons proffered by Respondent were the actual reasons for the discipline or were pretext.

12. The ALJ's failure to find that Respondent violated Section 8(a)(1) and (3) of the Act by suspending Evangelina Guzman, and placing her on probation for six months in January 2007. In support of this exception the General Counsel relies upon the testimony of Evangelina Guzman (Tr. 584-87, 638-40, 647), Angela Kayonnie (Tr. 686, 745, 769, 781-88, 1826, 1856-57, 1860-65), Jaime Chavez (Tr. 836-38, 1736-40, 1746-50, 1755-58), Craig Milum (Tr. 405-408, 1892, 2132-33), and the record exhibits associated therewith. This exception should be granted because the ALJ failed to properly evaluate whether the reasons proffered by Respondent were the actual reasons for the discipline or were pretext.

13. The ALJ's failure to order that Respondent recognize and bargain with the Union pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In support of this exception the General Counsel relies upon the Union's showing of majority support,

Respondent's unfair labor practices, and the decline in Union support based upon Respondent's illegal conduct. (ALJD slip op. at pp. 13-14, 26) The General Counsel also relies upon the unfair labor practices set forth in these exceptions. This exception should be granted because Respondent's numerous, persistent, and pervasive unfair labor practices cannot be remedied by traditional means, and make holding a fair election impossible.

Dated at Phoenix, Arizona, this 30th day of November 2007.

Respectfully submitted,

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