

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

**TOWER AUTOMOTIVE OPERATIONS USA,
LLC**

and

CASES 13-CA-44668

13-CA-44894

JUAN RUVALCABA, an Individual

and

STEVEN RAMOS, an Individual

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

NOW COMES Lisa Friedheim-Weis, Counsel for the General Counsel, who, pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, files this Answering Brief in response to Respondent's April 28, 2009 Exceptions To The March 31, 2009 Decision Issued By Administrative Law Judge Michael A. Rosas¹.

¹ Throughout this Answering Brief, General Counsel's exhibits will be referred to as "GCX___," and Respondent's exhibits will be referred to as "RX ___." Transcript references will be referred to as "Tr. ___." The Administrative Law Judge will be referred to as "ALJ," the National Labor Relations Board will be referred to as the "Board," and the National Labor Relations Act will be referred to as the "Act." Citations to the ALJ's Decision will be referred to as "ALJD," and the ALJ's exhibits will be referred to as "ALJX ___." With respect to the parties in this case, Charging Party Juan Ruvalcaba will be referred to as "Ruvalcaba," Charging Party Steven Ramos will be referred to as "Ramos," and Tower Automotive Operations USA I, LLC will be referred to as "Respondent." In addition, the United Auto Workers, Local 3212 will be referred to as the "Union." References to Respondent's April 28, 2009 Brief In Support Of Its Exceptions will be referred to as "RBrfExcpt ___."

Finally, please note that, subsequent to the close of the record in this matter, Counsel for the General Counsel and Respondent arrived at a Joint Stipulation/Exhibit regarding Respondent's receipt of a record (which had been identified and received by the ALJ during trial as GCX 7) which Respondent had previously denied receiving. Said Joint Exhibit will be referred to as "JX 1."

I. Overview

The record evidence and the ALJD both reflect an inexorable truth: that Respondent suspended and discharged employee Juan Ruvalcaba, and then discharged employee Steve Ramos, in violation of Sections 8(a)(3) and (1) due to their nascent but forceful Union activities.

The instant cases paint a clear picture of a company that did not want two new Union activists to “stir the pot,” and the lengths that this company would go to in order to silence these new Union activists.

As the ALJD reflects, Respondent suspended and then fired employee Juan Ruvalcaba and fired employee Steven Ramos almost immediately after they were appointed to the Union’s Skilled Trades Committee, a committee that had been largely defunct for years. With Ruvalcaba and Ramos on board, the Union’s Skilled Trades Committee had reemerged, and they pushed Respondent to institute sorely needed training for the maintenance technicians in seniority order. Up to this point, Respondent had done little to no training at its facility and had no written policy or set practices governing training for its maintenance employees.

Clearly, Respondent did not like to be told how and when to train its employees, for, a mere three days after Ruvalcaba and Ramos spoke out at a joint meeting of the Skilled Trades Committee, Respondent decided to audit Ruvalcaba’s and Ramos’ work and to order a report of their internet usage. Prior to this time, Respondent had never audited any employees’ work or ordered internet reports of any employees. Moreover, when Respondent undertook this audit and internet inquiry, only Ruvalcaba’s and Ramos’ records were examined. There were no comparative records ordered for any other employees. ALJD 3-5; 15-16.

Within *two weeks* of the joint meeting of the Skilled Trades Committee, and only *one day* after Ruvalcaba told Respondent he had called a meeting at the Union hall to discuss the training issue, Ruvalcaba was fired and Ramos was suspended for poor work performance and internet abuse. And though Ramos returned to work after the suspension, his days were numbered. A short six weeks later, Ramos too was fired for a lockout/tagout violation, an offense for which no other employee of Respondent had ever been fired. ALJD 12-13.

So, after years of performing the same work without incident and without write-ups, Ruvalcaba and Ramos were suddenly accused of not completing their work and of falsifying their paperwork. And after years of logging onto the internet without anyone telling them that they should not do so, or that looking at the weather report was inappropriate, they were suddenly accused of abusing the internet. All of this suddenly inappropriate behavior just happened to be noticed by Respondent for the first time a mere two weeks after Ruvalcaba and Ramos first spoke up as new Union officers regarding the need for an overhaul of Respondent's nonexistent training program, and a mere day after they told Respondent that they were going to stage a meeting at the Union hall about the unfair assignment of training at the facility. ALJD 15-16.

Respondent filed four exceptions and a lengthy brief in support thereof to the ALJD, based on the ALJ's credibility findings and the ALJ's purported "erroneous factual findings," and even going so far as to assert that the ALJ *invented facts* in reaching his conclusion that Respondent violated Sections 8(a)(3) and (1) of the Act. RBrfExcpt 21. However, as will be discussed below, Respondent is making these inappropriate assertions in a futile attempt to have a second bite at the apple. Respondent wants the Board to reverse the ALJ's well-reasoned findings simply because it does not like that its witnesses' testimony was found to be internally

inconsistent and/or and unsupported by the record whereas the Counsel for the General Counsel's witnesses' testimony was found to be fully supported by the record.

Despite Respondent's attempt to re-argue and re-mold the evidence which was already fully scrutinized, nothing in Respondent's exceptions detracts from the credibility determinations, factual findings, or legal conclusions in the ALJD. The ALJD, supported by ample record evidence, provides a complete and accurate analysis of the facts and the law in these cases. Counsel for the General Counsel submits that the ALJ's findings that Respondent violated Sections 8(a)(3) and (1) of the Act by suspending and firing Ruvalcaba and by firing Ramos are proper and should be affirmed herein. Accordingly, Respondent's exceptions should be denied. Counsel for the General Counsel will address each of Respondent's four exceptions below in Section II (B-E).

II.

Respondent's Exceptions Do Not Comport With The Record Evidence

A. ALJ's Credibility Determinations Should Not Be Disturbed

Counsel for the General Counsel asserts that the Board should not disturb the ALJ's credibility determinations in the instant matter because they are supported by the record evidence and objective considerations.

The Board's established policy is not to overturn an ALJ's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that the findings are incorrect. *Metfab Inc.*, 344 NLRB 215 (2005), citing *Standard Drywall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). Similarly, the Board will not displace credibility determinations based in part on demeanor. *Standard Drywall*, *supra*; *Seattle Seahawks*, 292 NLRB 899, 900 (1989).

Respondent fails to prove by a clear preponderance of all the evidence presented in these cases that the ALJ's credibility resolutions are incorrect. What Respondent has done is to object to the ALJ's reliance on admissions by Respondent's witnesses which are not favorable to Respondent's case and to the ALJ's refusal to rely on isolated snippets of testimony which Respondent believes will assist it in persuading the Board to overturn the ALJD. As such, Respondent's Exceptions 1-4 should be overruled and the ALJD should be adopted.

B. The ALJD Properly Held That Ramos Was Illegally Discharged In Violation Of Section 8(a)(3) Of The Act (Respondent's Exception 1)

The ALJD properly found that Respondent's termination of Ramos for a lockout/tagout violation on May 28, 2008² was attributable to anti-Union discriminatory motivation and disparate treatment. ALJD 12-13; 15. In making this decision, the ALJ relied on the testimony of Respondent's managerial witnesses Greg Watts and Matt Pollick, both of whom admitted that Ramos' own supervisor, Don Plomann, had committed a lockout/tagout violation, resulting in only a verbal counseling, whereas Ramos received the maximum penalty of 10 points for intentionally disregarding safety rules. ALJD 12-13; Tr. 492-493; 712-713. As the ALJD points out, "given the fact that Respondent failed to produce any records in response to the General Counsel's subpoena requesting such disciplinary records, the only inference that can be drawn is that Plomann's verbal counseling was not even recorded in his personnel file." ALJD 13, fn. 50. The ALJD correctly took note of the undisputed fact that Respondent's response to Ramos' violation of the lockout/tagout policy was *unprecedented* and evidenced Respondent's clear disparate treatment of Ramos due to his Union activities. ALJD 15-16. "The Respondent's only precedent for disciplining an employee for violating the lockout/tagout safety policy was to

² All dates hereinafter refer to 2008 unless noted otherwise.

verbally counsel the employee who, in that instance, was Plomann, the Charging Parties' supervisor." ALJD 16.

Though Respondent clearly does not like the outcome, the ALJ, after listening to the testimony of ten witnesses over four days of trial, properly concluded that Ramos was suspended³ and ultimately terminated because of his Union activities. ALJD 14-15. The ALJ, having weighed all of the record evidence, concluded that Respondent "set-up" Ramos, along with fellow discriminatee Ruvalcaba, for adverse action within mere days of their Union activities, and that all of Respondent's reasons for disciplining Ramos were pretextual. ALJD 15. As such, Respondent's Exception 1 should be overruled and the ALJ's findings should be sustained.

C. The ALJ Properly Held That Respondent Harbored Anti-Union Animus Toward Charging Party Ruvalcaba (Respondent's Exception 2)

1. The ALJ's Findings Accurately Focus On Anti-Union Animus Rather Than Pollick's Alleged "Dislike" For Ruvalcaba

The ALJ properly found that Respondent, and Pollick in particular, harbored clear anti-Union animus toward Ruvalcaba in making the pretextual decision to suspend and then terminate him in April. ALJD 14-15. In its Exception 2, Respondent appears to argue that, because Ruvalcaba did not engage in any Union activities prior to March, and because Pollick had expressed dislike for Ruvalcaba back in February, it is impossible that Respondent held any anti-Union animus toward him in reaching its decision to suspend and terminate him in April. This argument is misleading and fallacious.

³ Though the ALJD held that Ramos' charge of suspension on April 4 was time-barred, it also stated that all the facts related to that suspension were relevant background to show Respondent's bias leading to Ramos' termination on May 28. ALJD 15, fn. 53.

Though the ALJD noted that Pollick expressed animosity toward Ruvalcaba in February, and also noted that Ruvalcaba did not engage in Union activities until March, the ALJD also correctly noted that this animosity was specifically raised in the context of Pollick not wanting the Union Chairperson to name Ruvalcaba to a critical Union committee. ALJD 14.

Respondent's reliance on Pollick's pre-March dislike of Ruvalcaba actually serves as further evidence of Respondent's pretextual motivations in this matter. Contrary to Respondent's assertions, the ALJ did not make a finding that Pollick's animus "predated any Union activity and was borne out of character concerns." RBrfExcpt 18. The ALJ did, however, make a finding that Pollick never acted on his purported "dislike" for Ruvalcaba until he became an outspoken Union committeeman. ALJD 14-15. Respondent makes much of the fact that Pollick had issued discipline to Ruvalcaba in the past (twice in mid-to-late 2007). But while Pollick testified that he could have fired Ruvalcaba for either of these two purported behavioral offenses, he admitted that he chose not to fire him on either of those occasions in 2007. Tr. 402-405. So although Ruvalcaba was disciplined for fighting in 2007, Pollick himself made the decision not to fire him.

Yet, immediately after Ruvalcaba joined the Union's Skilled Trades Committee as its chairman and spoke out about the need for training in March, Pollick fired him for allegedly leaving some dirt on a machine and looking at the internet (offenses which had never been pursued against any other employee of Respondent). As stated by the ALJ regarding the transparency of Respondent's March anti-Union animus:

"The Respondent did not take long to react. On March 21, 3 days after Ruvalcaba and Ramos met with Pollick to insist on seniority-based safety training, Respondent notified them that their work would be audited. Almost simultaneously, the Respondent allegedly looked into their internet usage at the worksite's computer kiosks. Both actions were unprecedented and unrelated to any periodic evaluation or legitimate complaints by supervisors...Subsequently, on

April 4, 1 day after Ruvalcaba and Ramos called Pollick to complain about the latter's decision to roll out safety training for the newer technicians and without regard to seniority, Pollick had Watts suspend Ruvalcaba and Ramos based upon poor work performance and excessive internet use. In Ruvalcaba's instance, it was tantamount to termination." ALJD 15.

2. The ALJD Fairly And Fully Weighed The Evidence Of How Ruvalcaba's Union Activities Were Received By Pollick

Respondent argues that the ALJ disregarded testimony of witnesses present at the March 18 meeting of the Respondent/Union Skilled Trades Committee in order to "invent an air of hostility." RBrfExcpt 20. Counsel for the General Counsel submits that the ALJ did no such thing, and that Respondent is desperately attempting to conjure a rosy, supportive, perfect picture of what was admittedly quite a contentious issue between Respondent and the Union (meaning between Pollick and Ruvalcaba) at the March 18 meeting – the issue of employee training in seniority order.

Though Respondent insists that the ALJ ignored the fact that Pollick was receptive to the Union's ideas about a formal training program at the March 18 meeting, the ALJ specifically acknowledged that "Pollick was receptive to the suggestions raised, including training development." ALJD 4. However, the ALJ, in considering all of the record evidence, also was compelled to acknowledge that there was an undercurrent of discord at the meeting regarding seniority in training. ALJD 4-5. And while Respondent may have wanted the ALJ to gloss over the fact that the seniority issue in assigning training was a hot topic, Pollick himself admitted that the sequence in which the employees received training was a source of disagreement between Pollick and Ruvalcaba (in that Pollick, for Respondent, wanted the newest employees to train first and Ruvalcaba, for the Union, wanted the more senior employees to train first). Tr. 450-451. Moreover, Ruvalcaba certainly did not, as Respondent asserts, concede that Respondent bore him no ill will for his Union activity. Both Ruvalcaba and Ramos testified that Ruvalcaba

raised the issue of seniority and the Union's insistence on providing training to employees in seniority order. Tr. 203-204; 30; 37; 448. The ALJD accurately reflects all of the record testimony on this issue. ALJD 5; ALJD fn. 16. As such, the ALJ did not invent any air of hostility – the ALJ properly relied on Pollick's admission that there was in fact a substantive disagreement over the issue of training on March 18, which was just three days before Respondent began the audit of Ruvalcaba's (and Ramos') work. Therefore, for the reasons delineated in Section II C (1) and (2), Respondent's Exception 2 should be overruled and the ALJ's findings should be sustained.

D. The ALJ Did Not “Invent Facts” Or Make Factual Findings Contradicted By The Evidence (Respondent's Exception 3)

1. ALJD Properly Credits Counsel For The General Counsel's Witnesses Regarding The Scheme To Punish Ruvalcaba For His Recent Union Activities

In its Exception 3, Respondent boldly claims that the ALJ invented facts in order to conclude that Ruvalcaba's discharge was an anti-Union scheme. In doing so, Respondent repeatedly points out the ALJ's reference on page 6 of the ALJD to a conversation between Pollick and Respondent Manager Bill Noojin, even making the effort to count out how many times Pollick referenced Noojin during the course of his testimony.

It is clear from the context of the ALJD, as well as from a reading of Noojin's testimony, that, in Respondent's quoted portion of page 6 of the ALJD (captioned “Ramos and Ruvalcaba Are Audited”), the ALJ inadvertently referred *once* to “Pollick” instead of “Plomann.” RBrfExcpt 21; ALJD 6. Read in its entirety, the ALJD references continuing communications between Noojin and Plomann (rather than Pollick) about Ruvalcaba and Ramos and their work during March. At most, Respondent is entitled to a correction what was obviously a

typographical error – that the ALJ inserted “Pollick” rather than “Plomann” once on line 17 of page 6 of the ALJD.

However, for Respondent to suggest that the facts were invented, or the analysis changes, because the ALJ mistakenly typed one “P” name for another “P” name is outrageous. The ALJ’s recitation of the facts and the *Wright Line* analysis that follows in the ALJD applies regardless of which supervisor was discriminatorily auditing the discriminatees’ work and ordering their internet records.

Similarly, it is outrageous for Respondent to assert that the ALJ “pulled facts out of thin air” simply because the ALJ did not credit Respondent’s witnesses. RBrfExcpt 22. When Respondent repeatedly claims that the ALJ’s contrary findings are “at odds with the record evidence,” Respondent is simply attempting to cherry-pick the evidence it wishes the ALJ would have credited. It is the ALJ’s obligation to make such credibility determinations and findings of fact. The ALJ, having weighed all the record testimony on this issue, specifically and properly rejected Plomann’s and Noojin’s denials and explanations, and instead accepted Ruvalcaba’s and Ramos’ truthful testimony regarding Plomann, Noojin, their scheme, and the March 21 audit⁴. ALJD 6.

Moreover, even if, arguendo, the audit began when Respondent insists it began (around March 26 or 27), Respondent has never denied that the audit of Ruvalcaba and Ramos took place in late March and early April. RX 12-14. So even if the audit began on March 26 or 27, it was still only little more than one week after Ruvalcaba and Ramos spoke up at the Skilled Trades

⁴ Respondent states in its Brief in Support Of Exceptions that the finding that Plomann announced the audit on March 21 is also a “factual fabrication” in that neither Ruvalcaba nor Ramos ascribed any particular date to the purported announcement. RBrfExcpt 23, fn. 7. This is erroneous. Ruvalcaba and Ramos both testified that Plomann informed them right at the start of the plant shutdown, March 21, that their work was going to be audited. Tr. 212-213; 47-48.

meeting, demanding seniority-based training for the maintenance employees. The ALJ's *Wright Line* analysis, and its emphasis on Respondent's suspicious timing of the audit, would apply with equal force whether Respondent instigated the audit three days or eight days after the discriminatees engaged in Union activities. ALJD 14-15.

2. ALJ Correctly Finds That Respondent Never Audited Specific Employees' Work or Ordered Internet Records Of Its Employees

Respondent also asserts in its Exception 3 that the ALJ relies on erroneous evidence and/or ignores the record evidence regarding the ALJ's conclusions that Respondent never audited specific employees work or ordered internet records of its employees before it pretextually audited and ordered internet records of Ruvalcaba and Ramos. However, it is Respondent that misstates the facts and improperly cites to the record in making this baseless, after-the-fact argument.

(a) Audit

The ALJ was absolutely correct in finding that Respondent's actions in ordering the work audit of Ruvalcaba and Ramos was *unprecedented*. ALJD 15. Contrary to Respondent's assertions, its own witnesses admitted that Respondent never audited any specific employees' work before it decided to audit Ruvalcaba's and Ramos' work during the March-April shutdown. Tr. 707. Watts testified that, though many employees had been written up by Respondent over the years for poor work performance prior to March and April, Respondent had never taken the step of auditing their work. Tr. 707-708⁵. Respondent, in citing Pollick's testimony from page 483 of the transcript that there were "audits all the time," is actually citing to the posturing of its

⁵ Watts also testified that, while Respondent performed random audits on employees' performance, records of said random audits were not maintained until April (after Ruvalcaba was fired and Ramos was suspended). Watts further admitted that he did not even know that Respondent was performing these random audits until January 28, 2009 (the day before his testimony in these matters). Tr. 713-714.

counsel regarding Respondent's failure to produce subpoenaed audit reports. RBrfExcpt. 26; Tr. 483. Respondent's counsel admits on page 486 of the transcript that there are no records of work audits for the subpoenaed period between January 1, 2007 and April 13, 2008 besides those of Ruvalcaba and Ramos. Tr. 486. Further, Pollick conceded that any audit-type action that had been conducted prior to the audit of Ruvalcaba and Ramos had been at most informal note-taking passed among the supervisors, and not a formal audit procedure such as was instituted against Ruvalcaba and Ramos⁶. Tr. 487-488. Similarly, Respondent Supervisor Pete Buddell, who Respondent insists in its Exceptions testified that he is supposed to regularly audit the work of the employees as part of his regular job duties, actually testified that the only auditing he ever did (aside from the specific audit of Ruvalcaba and Ramos in March-April) was to do *random* audits on employee performance. Tr. 628-630. When asked specifically if he had ever been instructed to audit any particular employees' work, other than Ruvalcaba and Ramos, Buddell answered with a straightforward "No." Tr. 630.

(b) Internet

As with the audit, the ALJ was absolutely correct in finding that Respondent's actions in ordering the internet records of Ruvalcaba and Ramos was *unprecedented*. ALJD 15. As noted by the ALJD, Respondent's witnesses uniformly conceded that Respondent never kept track of employees' internet usage until Pollick and Watts suddenly decided to order reports from Respondent's headquarters showing Ruvalcaba's and Ramos' internet use in late March and early April. ALJD 5; 15; Tr. 453-454; 699. Moreover, Pollick and Watts admitted that, prior to suspending/firing Ruvalcaba and Ramos, Respondent had never issued disciplinary points to

⁶ Interestingly, and as noted in the ALJD, Respondent kept no records of these random, informal "audits" until late April, after Ruvalcaba was terminated.

anyone for internet abuse. Tr. 464; 706. Pollick and Watts also admitted that Respondent did not order internet usage reports for any other employees for this time period, so when they decided that Ruvalcaba and Ramos had engaged in “internet abuse,” they had no idea of how Ruvalcaba’s and Ramos’ internet use compared to that of any other employee in the plant. Tr. 454; 699.

Moreover, Ruvalcaba and Ramos both testified, and Respondent conceded, that they used the internet at work as much or more from the time they were hired in 2004 and 2005 respectively than they did during the March-April time period at issue. ALJD 5; Tr. 53; 238-239; GCX 14. Up until April 4, no one ever told Ruvalcaba or Ramos to stop using the internet. No one ever told Ruvalcaba and Ramos that they were using the internet too often. No one ever told Ruvalcaba and Ramos that they should not look at non-work-related sites. No one ever told Ramos or Ruvalcaba that using the internet was interfering with their work in any way. Tr. 56; 218-219. Prior to April, neither Ruvalcaba nor Ramos were ever disciplined or even verbally warned about their internet usage. Id.

To the contrary, their own supervisor, Plomann, regularly called Ruvalcaba and Ramos over to look at various non work-related websites. Tr. 56-58; 219-220. Though he testified that he was “suspicious” of their internet usage during this March-April time period, Plomann admitted he had Ruvalcaba and Ramos log onto the internet to show them a Corvette he was interested in buying. Id; 537-538. Plomann also admitted that he never told Ruvalcaba and Ramos to stop looking at the internet during this period or raised their internet use with them at all. Tr. 59; 220.

As ALJ Rosas properly recognized, it was an accepted practice that the maintenance technicians accessed the internet on a regular basis. ALJD 5. Ruvalcaba and Ramos each

observed their fellow maintenance technicians on internet sites for such things as cars, houses, and the weather report on a daily basis. Tr. 56; 218. Respondent admitted that, going back to at least January 2007, and continuing through May (when Ramos was fired), several other maintenance technicians regularly used the internet during work time as much or more, and even much more, than Ruvalcaba or Ramos. ALJD 5; Tr. 454; GCX 14. Respondent further admitted that these other maintenance technicians were regularly accessing internet sites that were not work-related, such as weather and car sites. Id. In fact, Respondent's internet usage reports for the maintenance department during the critical March-April time period show that several other maintenance technicians viewed much more internet content than did Ramos⁷. GCX 11. For example, Respondent's records show that a maintenance technician named Andrija Jovanovic viewed internet content almost four times more than Ramos during the same two-week March-April period in question. GCX 11. Yet Respondent, which was subpoenaed to produce all records showing employees who had been disciplined for internet use/abuse, provided no records and admitted that no such records existed. ALJX 1.

In its Exceptions, Respondent complains that the ALJ has made improper factual findings because the ALJ credited Counsel for the General Counsel's witnesses rather than Respondent's witnesses. As discussed above, it is precisely the function of the ALJ to hear, weigh and make credibility determinations based on witnesses' testimony. In the instant case, the ALJ properly credited Ruvalcaba's and Ramos' testimony rather than that of Pollick⁸ regarding other

⁷ Strangely, Ruvalcaba is not listed on Respondent's internet usage report for March-April (GCX 11) even though this was clearly information that had been subpoenaed by Counsel for the General Counsel and upheld by the ALJ as relevant information. ALJD 15; Tr. 172-184; ALJX 1.

⁸ The ALJ, in discrediting Pollick, went so far as to reference his demeanor on the stand: "I was particularly taken aback by Pollick's conduct in frequently looking at Watts at counsel's table while he testified. On several occasions that I observed, he held up exhibits facing Watts as if to be looking for subtle messages from the latter." ALJD 9, fn. 36.

employees being blocked from the internet rather than disciplined. Respondent may not like that the ALJ did not credit its witnesses on this issue, but that does not make the ALJ's findings erroneous or "without legitimate evidentiary support."

As such, and for the reasons delineated above, all subsections of Respondent's Exception 3 should be overruled and the ALJ's findings should be sustained.

E. ALJ Properly Found That Counsel For The General Counsel Met Its *Wright Line* Burden Regarding The Discharges Of Ruvalcaba and Ramos (Respondent's Exception 4)

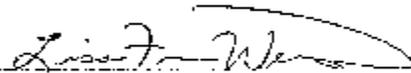
In its Exception 4, Respondent merely reiterates that the ALJ misstated facts and relied on "false evidence" such that the Counsel for the General Counsel was "excused" from meeting its *Wright Line* burden. Respondent, without explanation, insists that the ALJ "ignored" the fact that Respondent had legitimate reasons to discipline and terminate Ruvalcaba and Ramos. As in all of its previous exceptions, Respondent is confusing the ALJ's well-reasoned rejection of Respondent's arguments with an alleged failure of the ALJ to consider its arguments. A reading of the ALJD shows that the ALJ carefully considered all of the witness and documentary evidence, and that the ALJ was convinced by the weight of Counsel for the General Counsel's evidence that Ruvalcaba and Ramos were suspended and discharged for their Union activities in violation of Sections 8(a)(3) and (1) of the Act. Respondent may not like the outcome of the ALJD, but that does not mean that it was improper or ill-reasoned. The clear preponderance of the evidence in this matter fully supports the ALJ's credibility determinations, and they should not be disturbed by the Board. As such, Respondent's Exception 4 is without merit and should be overruled.

III.
Conclusion

ALJ Rosas' thoughtful and well-reasoned decision concluding that Ruvalcaba was suspended and fired in April, and that Ramos was fired in May, as a direct result of their March and April Union activities, is fully supported by the record evidence and well-established Board precedent. Based on the foregoing, Counsel for the General Counsel respectfully requests that the Board affirm and adopt ALJ Rosas' March 31, 2009 decision that Respondent violated Sections 8(a)(3) and (1) of the Act as described therein.

DATED at Chicago, Illinois, this 12th day of May, 2009.

Respectfully submitted,



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CERTIFICATE OF SERVICE:

The undersigned hereby certifies that Counsel for the General Counsel's Answering Brief to Respondent's Exceptions to the Decision of the Administrative Law Judge has been served upon the following parties, as indicated this 12th day of May, 2009.

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