

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 2**

ARDSLEY BUS CORPORATION INC.
a/k/a GENE'S BUS COMPANY,

Respondent

Case Nos. 2-CA-38713,
2-CA-39049
2-CA-39376
2-CA-39467

and

TRANSPORT WORKERS UNION OF GREATER
NEW YORK, LOCAL 100, AFL-CIO,

Charging Party.

**GENERAL COUNSEL'S CROSS-EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Allen M. Rose
Counsels for the General Counsel
National Labor Relations Board, Region 2

April 20, 2010

The General Counsel, by its undersigned Counsel, pursuant to § 102.46(e) of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, submits the following Cross-Exceptions to the Decision and Recommended Order (the "ALJD") dated March 2, 2010, and Errata dated March 15, 2010, of Administrative Law Judge Raymond P. Green (the "ALJ") in Case Nos. 2-CA-38713, 2-CA-39049, 2-CA-39376, 2-CA-39467.¹

Regarding Violations of Section 8(a)(1) of the Act

1. The ALJ erred by failing to find that Respondent, on or about March 19, 2008, by Thomas Gillison, violated Section 8(a)(1) of the Act by threatening shop steward Cesar Uchofen with physical violence because of his Union activities. (ALJD 10:25-33, 47-51.)

2. The ALJ erred by failing to find that Respondent, on or about June 16, 2008, by Thomas Gillison, violated Section 8(a)(1) of the Act by threatening shop steward Cesar Uchofen with physical violence because of his Union activities. (ALJD 12:50-52 through 13:1-12.)

3. The ALJ erred by failing to find that Respondent, on or about September 8, 2008, by Thomas Gillison, violated Section 8(a)(1) of the Act by telling shop steward Cesar Uchofen that it was futile for the Union to bring employee grievances to Respondent. (ALJD 29:42-51.)

4. The ALJ erred by failing to find that Respondent, on or about September 8, 2008, by Thomas Gillison, violated Section 8(a)(1) of the Act by threatening shop steward Cesar Uchofen with unspecified reprisals if he assisted the Union. (ALJD 29:42-51.)

5. The ALJ erred by failing to find that Elisa Arias and Rosa Vilella are agents within the meaning of the Act. (ALJD 30:49-52; 34:47-51.)

6. The ALJ erred by failing to find that Respondent, in or about late-May 2009 and early to mid-June 2009, by Elisa Arias and Rosa Vilella, violated Section 8(a)(1) of the Act by

¹ References to the ALJD and Errata will follow the format "ALJD [page number]:[line number(s)]" and "Errata [page number]:[line number(s)]."

interrogating employees regarding whether or not they signed a petition to decertify the Union. (ALJD 34:46-51.)

7. The ALJ erred by failing to find that Respondent, in or about December 2008, by Elisa Arias at its facility, threatened employees that Respondent would reduce hours and other benefits to employees known to associate with the Union. (ALJD 30:45-52.)

Regarding the Violation of Section 8(a)(3) and (1) of the Act

8. The ALJ erred by failing to find that Respondent, on or about January 21, 2009, violated Section 8(a)(3) and (1) of the Act by terminating the employment of shop steward Cesar Uchofen because of his Union activities. (ALJD 16:1-16.)

Regarding the Violations of Section 8(a)(5) and (1) and 8(d) of the Act

9. The ALJ erred by failing to find that Respondent, since on or about August 25, 2008, and continuing to date, violated Section 8(a)(5) and 8(d) of the Act by failing to continue all the terms and conditions of the parties' collective-bargaining agreement by means of Respondent's failure and refusal to assign regular, charter and extra routes as required by the parties' collective-bargaining agreement. (ALJD 17:2-4. 43-52; 20:12-17; 25:51-52 through 26:1-9.)

10. Although the ALJ correctly found that Respondent, on or about June 5, 2009, violated Section 8(a)(5) and (1) of the Act when it engaged in bad-faith bargaining by refusing to negotiate with the Union if shop steward Cesar Uchofen remained on the bargaining committee, the ALJ erred by failing further to find that Respondent bargained in bad faith in violation of Section 8(a)(5) and (1) of the Act because of Respondent's additional conduct consisting of, on or about June 18, 2009, refusing to consider the Union's bargaining proposals, to submit its own

11. Although the ALJ correctly found that Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the Union with requested information, the ALJ misidentified certain dates of the Union's information requests. (ALJD 37:43; 46:6). Those dates should be: October 23, 2008; December 8, 2008; May 21, 2009; and June 1, 2009.

12. Although the ALJ correctly found that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to meet with Union representatives regarding pending grievances, the ALJ erred by not also finding such conduct to be a violation of Section 8(d) of the Act. (ALJD 18:37-44; 42:1-2; 45:18.)

13. Although the ALJ correctly found that Respondent violated Section 8(a)(5) and (1) when it unlawfully withdrew recognition from the Union because employee disaffection with the Union was proximately caused by certain of Respondent's unremedied unfair labor practices, the ALJ erred by failing also to find additional unremedied unfair labor practices to have proximately caused employee disaffection. (ALJD 39:21-38; Errata at 1:28-52 through 2:1-15.) These additional unremedied unfair labor practices are:

(a) that Respondent, on or about March 19, 2008, by Thomas Gillison, violated Section 8(a)(1) of the Act by threatening shop steward Cesar Uchofen with physical violence because of his Union activities;

(b) that Respondent, on or about June 16, 2008, by Thomas Gillison, violated Section 8(a)(1) of the Act by threatening shop steward Cesar Uchofen with physical violence because of his Union activities;

(c) that Respondent, on or about January 21, 2009, violated Section 8(a)(3) and (1) of the Act by terminating the employment of shop steward Cesar Uchofen because of his Union activities;

(d) that Respondent, since on or about August 25, 2008, and continuing to date, violated Section 8(a)(5) and 8(d) of the Act by failing to continue all the terms and conditions of the parties' collective-bargaining agreement by means of Respondent's failure and refusal to assign regular, charter and extra routes as required by the parties' collective-bargaining agreement;

(e) that Respondent, on or about September 8, 2008, by Thomas Gillison, violated Section 8(a)(1) of the Act by telling shop steward Cesar Uchofen that it was futile for the Union to bring employee grievances to Respondent;

(f) that Respondent, on or about September 8, 2008, by Thomas Gillison, violated Section 8(a)(1) of the Act by threatening shop steward Cesar Uchofen with unspecified reprisals if he assisted the Union;

(g) that Respondent, in or about late-May 2009 and early to mid-June 2009, by Elisa Arias and Rosa Vilella, violated Section 8(a)(1) of the Act by interrogating employees regarding whether or not they signed a petition to decertify the Union;

(h) that Respondent, in or about December 2008, by Elisa Arias at its facility, threatened employees that Respondent would reduce hours and other benefits to employees known to associate with the Union; and

(i) that Respondent bargained in bad faith in violation of Section 8(a)(5) and (1) of the Act because of conduct consisting of, on or about June 18, 2009, refusing to consider the Union's bargaining proposals, to submit its own proposals and to schedule

an additional bargaining session unless and until it received the Union's proposals in writing.

Regarding Compounding of Interest on Monetary Awards

14. The ALJ erred in dismissed General Counsel's Request that interest on any monetary award should be compounded on a quarterly basis. (ALJD 43:50-52.)

Dated at New York, New York
April 20, 2010

Respectfully submitted,



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² The ALJ incorrectly spelled Counsel for the General Counsel's name in the ALJD at 1, and in the Errata at 1. The correct spelling is Allen M. Rose.