

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

**AIM ROYAL INSULATION, INC.
and JACOBSON STAFFING, L.C.,
Joint Employers**

and

**Cases 28-CA-22605
28-CA-22714**

**INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & ALLIED
WORKERS, AFL-CIO, LOCAL NO. 73**

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

Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the General Counsel, files the following Exceptions to the Decision of Administrative Law Judge William G. Kocol, [JD(SF)-17-10] (ALJD), issued on May 21, 2010, in this matter:

1. The Administrative Law Judge's (ALJ) failure to find that Respondent Aim Royal Insulation, Inc. ("Aim Royal") violated Section 8(a)(1) and (3) of the Act by refusing to recall Jose Gurrola or place him on a preferential hiring list, upon his unconditional offer to return to work. (ALJD at 6-7) Included in this exception is the ALJ's finding that this allegation is time-barred by Section 10(b) of the Act. In support of this exception, Counsel for the General Counsel relies upon the testimony of Jose Gurrola (Tr. 580-85, 591, 627, 641-50, 668); Lazaro Campos (Tr. 527-59), Mike Gibbs, (Tr. 70), and Angel Aizu (Tr. 701-02), and the record exhibits associated therewith. This exception should be granted because, as an economic striker, Gurrola still retained the right to be reinstated, or be placed upon a preferential hiring list, despite his July 2008 termination for engaging in a protected strike.

2. The ALJ's dismissal of the allegation that Aim Royal violated Section 8(a)(1) and (3) of the Act by refusing to hire, or consider for hire, Angel Aizu, Luis Bolaños, Ezequiel Macias, Jose Flores, Adrian Anaya, Nathan Collison, Darrel Speakman, Chester McClure, Pablo Equizabal, and John Rohrback. (ALJD at 4, 8-9) Included in this exception is the ALJ's finding that Aim Royal had a hiring practice in place that precluded accepting applications from walk-in applicants, but instead relied upon hiring former employees and the recommendations from employees to fill its hiring needs. In support of this exception, Counsel for the General Counsel relies upon the testimony of Jose Gurrola (Tr. 557-58); Lazaro Campos (Tr. 323-29, 234-45, 995-1013), Mike Gibbs (Tr. 43-56, 96-97, 183-86, 193-94, 1037), Angel Aizu (Tr. 706-15), Luis Bolaños (Tr. 489-95), Ezequiel Macias (Tr. 942-43), Jose Flores (Tr. 510-512), Adrian Anaya (Tr. 515-518), Nathan Collison (Tr. 569-70), Darrel Speakman (Tr. 484-87), Chester McClure (Tr. 564-66), Pablo Equizabal (Tr. 529, 560-62), John Rohrback (Tr. 524-26), and the record exhibits associated therewith. This exception should be granted because the clear preponderance of all relevant evidence shows that Respondent had no such hiring system, and even if such a hiring practice existed, it was applied disparately, to screen out union applicants.

3. The ALJ's dismissal of the allegation that Aim Royal and Respondent Jacobson Staffing, L.C. ("Jacobson") are joint employers, and his subsequent dismissal of the allegation that Jacobson violated Section 8(a)(1) and (3) of the Act by refusing to hire, and consider for hire, Luis Bolaños, Gustavo Gonzalez, Shawn McMillan, and Angel Aizu. (ALJD at 13-16) In support of this exception, Counsel for the General Counsel relies upon the testimony of Sandy Chavez (Tr. 337-39, 393-94), Lazaro Campos (Tr. 219-225, 238, 341-42), Luis Bolaños (Tr. 488-509), Gustavo Gonzalez (Tr. 461-480), Shawn McMillan (Tr. 422-60), Angel Aizu (Tr. 699-744), and the record exhibits associated therewith. This exception should be granted because the

evidence shows that Aim Royal and Jacobson were at all times joint employers, including during the hiring process, and that the named employees were not hired, or considered for hire, because of their Union affiliation.

4. The ALJ's dismissal of the allegation that Jacobson refused to hire, or consider for hire, Scott McMillan on July 1, 2009, in violation of Section 8(a)(1) and (3) of the Act. (ALJD at 12-16) In support of this exception, Counsel for the General Counsel relies upon the testimony of Sandy Chavez (Tr. 344), Scott McMillan (Tr. 462), and Mark Waters, Jr. (Tr. 944-953), and the record exhibits associated therewith. This exception should be granted because the record establishes that, once Jacobson learned McMillan was associated with the Union, it immediately terminated the hiring process.

5. The ALJ's dismissal of the allegation that Aim Royal, through its supervisor Lazaro Campos, violated Section 8(a)(1) of the Act by telling Jose Gurrola that he no longer worked at Aim Royal while Gurrola was making an unconditional offer to end his protected strike and return to work. (ALJD at 7) In support of this exception, Counsel for the General Counsel relies upon the testimony of Lazaro Campos (Tr. 257-59), and the record exhibits associated therewith. This exception should be granted because the record establishes that Campos' statement was made while Gurrola was making an unconditional offer to return to work, which is protected by Section 7 of the Act, and therefore the statement was coercive.

6. The ALJ's erroneous finding that, on the day Jose Gurrola went on strike, Aim Royal supervisor Joseph Campos told Gurrola that Joseph would fill the water jug with water and bring it to the jobsite later that day. (ALJD at 6) In support of this exception, Counsel for the General Counsel relies upon the testimony of Jose Gurrola (Tr. 698) and Joseph Campos (Tr. 840, 855-59) and the record exhibits associated therewith. This exception should be granted

because the clear preponderance of all relevant evidence supports Gurrola's testimony that this conversation never occurred.

7. The ALJ's erroneous finding that employee Armando Lopez was hired as a referral from a current employee, and was not a walk-in applicant. (ALJD at 5) In support of this exception, Counsel for the General Counsel relies upon the testimony of Mike Gibbs (Tr. 126-28), Lazaro Campos (Tr. 320-21), the statements of Respondent's counsel (Tr. 118, 125), and the record exhibits associated therewith, including but not limited to, GC. 7 and AR. 1. This exception should be granted because the clear preponderance of all relevant evidence shows that Lopez was, in fact, a walk-in hire.

8. The ALJ's failure to order that interest on backpay be compounded on a quarterly basis. (ALJD at 17) This exception should be granted because only the compounding of interest can make adjudged discriminatees fully whole for their losses.

9. The ALJ's technical errors in the ALJD, specifically Paragraph 2(a) of the Order, relating to Jacobson (ALJD at 20) which inadvertently states "Respondent Aim" instead of "Respondent Jacobson;" and the misspelling of the Counsel for the General Counsel's last name (ALJD at 1).

Dated at Phoenix, Arizona, this 18th day of June 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE in AIM ROYAL INSULATION, INC. and JACOBSON STAFFING, L.C., Joint Employers, Cases 28-CA-22605 et al., was served by E-Gov, E-Filing, E-Mail and Overnight Delivery via United Parcel Service, on this 18th day of June 2010, on the following:

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