

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

|                         |   |                  |                    |
|-------------------------|---|------------------|--------------------|
| <b>DICKENS, INC.</b>    | ) | <b>Case Nos.</b> | <b>29-CA-29080</b> |
| <b>(Employer)</b>       | ) |                  | <b>29-CA-29198</b> |
|                         | ) |                  | <b>29-CA-29254</b> |
|                         | ) |                  |                    |
| <b>And</b>              | ) |                  |                    |
|                         | ) |                  |                    |
|                         | ) |                  |                    |
| <b>WENQING LIN</b>      | ) |                  |                    |
| <b>(Charging Party)</b> | ) |                  |                    |

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**RESPONDENT’S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE’S  
SUPPLEMENTAL DECISION**

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Respondent, Dickens Inc., hereby files the following exceptions to Administrative Law Judge Raymond Green’s (“Judge Green”) Supplemental Decision of July 16, 2010 in the above captioned case(s).

In his Supplemental Decision Judge Green argued **“the Board concluded that I did not sufficiently consider whether the Respondent had met its burden of sustaining its contention that it “selected Lin and Wu for layoff at least in part because of their lack of facility in English..” (JD, P1)<sup>1</sup>** Judge Green claims “Although Chou testified under oath, without interruption by either the General Counsel or me for four hours, he never once stated during his testimony that the reason he chose Lin or Wu for layoff was because they had difficulty with the English language. In fact, he didn’t even describe any reasons why he laid off

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<sup>1</sup> References to Judge Green’s Decision are abbreviated as “JD” followed by page number (P) and line number (L).

either individual.” (JD, P2, L23-26) **Judge Green’s statements are very different from what had happened in the hearing.**

In order to improve the efficiency and accuracy of order picking, after Mr. Lin left in Sept.2006, we started a system where 2 associates work together; one would read out the bin number and then the other would pick out the card. In a cross examination with Mrs. Wu (Tr.V2, P234-P236)<sup>2</sup>, I had demonstrated the problems if a co-worker cannot understand English by asking how Mrs. Wu worked with Mr. Rayshawn King (Awai). The following transcript clearly shows the full participation in this issue from Judge Green and GC Mr. Powell.

JUDGE GREEN: Does she understand what 13 means?

THE WITNESS: Are you saying 14?

JUDGE GREEN: No, I'm saying 13.

THE WITNESS: Thirty four?

MR. CHOU: She said 30. She said is that 30?

MR. POWELL: No, no, no.

MR. CHOU: I ask is it 30?

JUDGE GREEN: Excuse me. The translator is trying to do something here. He's trying to find out if she understands what the word 13 means. Her answer seems to indicate that she doesn't.

THE INTERPRETER: Right, Your Honor, you're right.

JUDGE GREEN: Okay, so fine. I understand that, so you made your point. If you ask more questions you'll just take away from it.

MR. CHOU: Thank you.

JUDGE GREEN: This person Awai, who is that?

THE WITNESS: He's a black guy.

JUDGE GREEN: Does he speak Chinese?

THE WITNESS: No.

JUDGE GREEN: Thank you. (Tr.V2, P235, L12-25, P236, L1-7)

English is the main language used in this country, and it is no exception in our business. Almost all of our customers, sales reps and management only use English for communication, and our more than 20,000 designs of greeting cards in the warehouse are all printed in English,

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<sup>2</sup> References to the Transcript are abbreviated as “Tr.” followed by reference to the volume (V) of the six-volume transcript, page number (P) and line number (L).

the ability to understand English is important, and we have not hired anyone who cannot speak English since 2005. Judge Green quoted “Chou also testified that part of his decision was “cost savings,” inasmuch as Lin cannot lift heavy boxes and did not speak English and Chou could hire college students at \$8 per hour who could speak English and were capable of lifting heavy boxes” (JD, P2, L42-45) from the decision in a previous case back to year 2007. I have also clearly said “That’s also one of the reasons we lay off these people” to Judge Green in the hearing. (Tr.V2, P234, L9-10). **Judge Green’s statement “In fact, he didn’t even describe any reasons why he laid off either individual” was completely untrue.**

We took things easy when business was easy, but when business was changing and became tough; we had no choice but to become more demanding of the extra skills and capacities including English ability from each co-worker. We had 15 co-workers in our warehouse in June, 2008, and we laid off 6 of them including Mr. Lin and Mrs. Wu who do not speak English and do not have other skills such as typing and computer. In my letter to the NLRB’s Regional Office dated Oct.16, 2008 (Ex. R2, P75-76)<sup>3</sup> which Judge Green mentioned, I have listed our company’s need and the capacity of each worker. For example, Mr. Liu does not speak English either, but he was one of the few who is able to drive our high load forklift in the warehouse. The above document was presented and accepted as Respondent Exhibit R2 in the hearing, I have also brought my warehouse co-workers with me on the first day of the hearing, it should be the burden of GC Mr. Powell or Judge Green to challenge it like they did with Mrs. Wu’s English ability issue in the hearing if they have a different opinion.

Judge Green and the NLRB have been trying very hard to distort the truth and connect our lay off of Lin and Wu to their protected concerted activities, and completely chose to turn a

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<sup>3</sup> “Ex.” refers to Exhibit

blind eye to the reality of our business difficulty. As shown in the same letter dated June 20, 2008 which Judge Green is referring to (Exhibit R2, P48-49), I advised the NLRB of the following,

“Our business has been facing dramatic challenges recently. As shown on the attached report,

1. Our sales for the first 5 months in 2008 are down 19.97% compared to the same period in 2007.
2. The sales for May 2008 are down 24.80% compared to the same period in 2007.

We also predict our sales in June will be 40% less than the sales of May, and a continuous decrease in sales is expected to the end of this year.

We have been trying very hard to control our costs, but we will not be able to survive without taking further steps, and a reduction of the work force in the warehouse has become inevitable.” (Exhibit R2, P48-49)

In the same “Response to Charges” which Judge Green is referring to (Exhibit R2, P75-77), I also made the following statement,

“Our industry has been in a difficult time for years. When I received the decision from the NLRB appeals court in June, 2008, our business had been down by 20% for consecutive 11 months, and the monthly sales in our slow season such as July & August could drop to 50% of the sales in May. With the world economy crumbling, and with further deterioration in the foreseeable future, we would not survive without taking quick actions to cut down our cost.”

All the above sales numbers in great detail were sent to the NLRB for auditing before the hearing (Exhibit R2,P52, and Exhibit R16), and were also filed as Exhibit GC5 by Mr. Powell in the hearing, but no questions were raised by the NLRB and Judge Green.

Mrs. Wu was a co-worker and family friend for many years, and my mother treated her like her own daughter. I let Mr. Lin go in Sept. 2006, and was not aware that Mrs. Wu went to the NLRB to file a charge until she called me the night before the hearing in May, 2007. The Board stated in the decision that I violated the law because I knew or I should have known that Mrs. Wu was involved in concerted activity with Mr. Lin back in Sept. 2006, I hoped to have a

chance to ask the Board how you should be blamed if your wife slept with somebody else, and how you knew or should have known. Mrs. Wu supported us by testifying about almost everything contradicting her Affidavit prepared by the NLRB. Both of us had also tried our best to rebuild our relationship after the hearing, however, we still had to lay her off in June 2008, and her anger is understandable. Unfortunately, the NLRB took advantage of her anger again and tried to stage dogfights between us. I had patiently explained to her our business difficulties and how she could claim unemployment compensation; our conversation was recorded and replayed in the hearing, Judge Green mistakenly thought it was a conversation between Mrs. Wu and Mr. Lin. After listening to the recording and instant translation for more than 20 minutes, Judge Green said “All right. Hold on a second. I believe that this conversation is between Mr. Lin and Anna Wu.” (Tr.V4, P490, L4-5)

During the hearing of the first case, Judge Fish told me that I didn’t have to read Mrs. Wu’s affidavit which was prepared by the NLRB and contains many untrue and racial accusations such as I did not allow the Chinese workers to eat at the big table. (Ex.R1, P4, paragraph 11) On the first and second day of the hearing of the pending cases, I had requested a copy of Mrs. Wu’s affidavit (Tr.V1, P55, L20-25, P56, L1-11) and the full recording which the NLRB received from Mr. Lin (Tr.V2, P278, L18-25, P279, L1-24) which I am entitled to, and I still have not received them after all this time, and all the charges from the NLRB were based on the edited recording and the distorted “English” translations. After finding many instances of the word “Motherfucker” in a translation submitted by GC Mr. Powell, I wrote a “Motion to Correct Transcript” to Judge Green “on May 8, 2009 with the following statement.

“ I want to take this opportunity to tell Your Honor that I will possibly think that Mr. Blyer or Mr. Powell is a “Motherfucker”, I can possibly shout “Motherfucker” in English at you in the next hearing, but I did not say “Motherfucker” to Mr. Lin. When a Chinese speaking person condemns

somebody who fucked his own mother, regardless if the person comes from China, Taiwan, Singapore, Hong Kong, or China Town, we don't call them "Motherfucker", we call them "Chu Shan" which means "Animal" in Chinese.

**I sincerely hope that the NLRB will not play around with this type of "Motherfucker" translation and transcript in the future."**

I hope that Judge Green and the NLRB can put their emotions aside, stop playing around with the law and those "Motherfucker" English.

As a small business owner, I not only clean the floor, sometimes I even have to clean the toilet. How could I be accused of violating the law by asking a worker to sweep the floor and other unthinkable reasons? I would like to quote my following letter to express my feeling about the NLRB in this area.

"Thank you for talking to me. You are cordially invited to join our company's holiday party which will be held next Tuesday, Dec.15, 2009 at the following location. Direction and details are attached.

BEST BUFFET

179 Walt Whitman Road  
Huntington Station, NY 11746

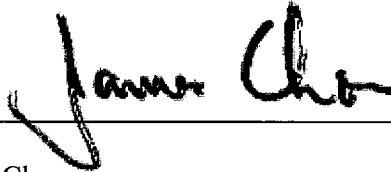
The building at the above location had been abandoned for a long time and was overrun by weeds. There previously was a restaurant named "East Buffet" (NLRB case no 29-CA-28302). Despite all the adversity against a small business owner, it remained there for years, but they could not survive the NLRB's attack, and finally the owner gave up and closed their doors. The gang from your Regional office scored another one for the win column, and their lawyer friends in the synagogues smiled all the way to the bank, but all the workers including those who were promised big gains all became the losers. How the NLRB targeted small business owners in this area for easy meals and their unethical and unlawful approach have left an unforgettable memory in this community, and it will take the NLRB and the government years to clean.

For the past 20 years, it has been a tradition for our company to have a holiday party. In the party, you will not only see the management, but also the one who sweeps the floor. Not only can you talk to them, but also their families. Our business is very small and comprised of different ethnicities, and you will find how we work together and why we are the only company of this scale in the

greeting card industry ever run by a minority in the past 100 years. It will definitely be very helpful for the NLRB and this country if you can also bring the gang from your Regional Office to our party, and let them experience and learn how to help business owners improve the relationships with their co-workers, not tear them apart.”

Our country has paid enough of a price for those gangs, and it’s time for someone to say “NO” to them.

Submitted this 10<sup>th</sup> day of August, 2010.

A handwritten signature in black ink, reading "James Chou", written over a horizontal line.

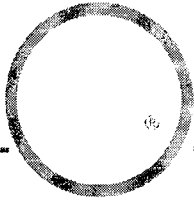
Mr. James Chou  
DICKENS INC.  
Respondent

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NLRB  
ORDER SECTION





DICKENS INC.

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## **Certificate of Service**

August 10<sup>th</sup>, 2010

I, James Chou, hereby certify that on August 10<sup>th</sup>, 2010, I served copies of "Respondent's Exceptions to the Administrative Law Judge's Supplemental Decision" in connection with Case Nos. 29-CA-29080, 29-CA-29198, and 29-CA-29254 on the following parties by way of United Parcel Service:

Mr. Henry Powell  
NATIONAL LABOR RELATIONS BOARD  
Two Metrotech Center, 5<sup>th</sup> Floor  
Region 29  
Brooklyn, NY 11201

Hon. Raymond Green  
Administrative Law Judge  
NATIONAL LABOR RELATIONS BOARD  
120 West 45<sup>th</sup> Street – 11<sup>th</sup> Floor  
New York, NY 10036

Mr. Wenqing Lin  
141-10 28<sup>th</sup> Avenue, Apt. 6D  
Flushing, NY 11354

Ms. Miaona Wu  
138-25 31<sup>st</sup> Street, Apt. 1G  
Flushing, NY 11354

August 10, 2010

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mr. James Chou  
DICKENS INC