



United States Government

NATIONAL LABOR RELATIONS BOARD
Region 29
Two MetroTech Center North
Jay Street and Myrtle Avenue - 5th Floor
Brooklyn, New York 11201-4201

August 20, 2010

Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570

Re: Dickens, Inc.
Case Nos: 29-CA-29080
29-CA-29198
29-CA-29254

Dear Mr. Executive Secretary:

Please find enclosed Counsel for the General Counsel's Reply to the Respondent's Exceptions in the above-captioned matter. Pursuant to the Rules, copies have been served upon the parties.

Respectfully,

A handwritten signature in black ink, appearing to read "H. Powell".

Henry J. Powell
Counsel for the General Counsel

cc:

James Chou
Dickens, Inc.
75 Austin Road
Commack, NY 11725

Wenqing Lin
14110 28th Avenue, Apt. 6D
Flushing, NY 11354

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ORDER SECTION

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

DICKENS, INC.

and

Case Nos. 29-CA-29080
29-CA-29198
29-CA-29254

WENQUING LIN, an Individual

COUNSEL FOR THE GENERAL COUNSEL'S
REPLY TO RESPONDENT'S EXCEPTION TO THE SUPPLEMENTAL
DECISION OF THE ADMINISTRATIVE LAW JUDGE

Henry J. Powell, Esq.
Counsel for the General Counsel
National Labor Relations Board
Region 29
Two MetroTech Center North, 5th Floor
Brooklyn, New York 11201-4201

Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the General Counsel hereby submits this Answering Brief in response to and in opposition to the Respondent's Exceptions to the Decision of the Administrative Law Judge.

BACKGROUND

On July 14, 2008, September 26, 2008 and November 6, 2008, Wenqing Lin, herein called Lin, filed charges alleging that Dickens, Inc., herein called Respondent, violated Sections 8(a)(1) and 8(a)(4) of the National Labor Relations Act, herein the Act, by harassing and unlawfully laying off its employees Wenqing Lin, herein called Lin, and Miaona "Anna" Wu, herein WU, in retaliation for their protected concerted activities and because they assisted the Board in the investigation of a previous charge in Case No. 29-CA-28229. On December 17, 2008, the Regional Director for Region 29 issued a Complaint based upon the allegations of the charge. A hearing on the matter was held on February 18, 19, 26, 27 and March 23, 2009, wherein all parties were given a full opportunity to present evidence in support of their position before Administrative Law Judge Raymond P. Green (hereafter ALJ Green). On June 8, 2009, ALJ Green issued his decision, wherein he found that Respondent violated the Act as alleged. Respondent filed exceptions to this decision. On June 10, 2010, the Board issued an Order upholding ALJ Green's decision but remanded the issue of whether Respondent presented enough evidence to support its contention that

1. The first step in the process of the cell cycle is the G1 phase, where the cell grows and prepares for division. This phase is characterized by the synthesis of proteins and the replication of DNA. The duration of the G1 phase varies between different cell types and is influenced by various factors such as growth factors and nutrient availability.

2. Following the G1 phase, the cell enters the S phase, where DNA replication occurs. During this phase, the DNA double helix is duplicated, resulting in two identical copies of the DNA molecule. This process is highly regulated and involves the action of DNA polymerase and other replication factors.

3. The G2 phase follows the S phase, where the cell continues to grow and prepares for the final division. This phase is characterized by the synthesis of additional proteins and the repair of any DNA damage that may have occurred during the S phase. The duration of the G2 phase is also variable and depends on the cell type and environmental conditions.

4. The final step in the cell cycle is the M phase, where the cell undergoes mitosis and cytokinesis. Mitosis is the process of chromosome segregation, where the two identical DNA molecules are separated into two daughter cells. Cytokinesis is the process of cell division, where the cytoplasm and organelles are distributed between the two daughter cells. The M phase is the shortest phase of the cell cycle and is highly regulated.

Conclusion

The cell cycle is a highly regulated and coordinated process that ensures the growth and division of cells. It consists of four main phases: G1, S, G2, and M. Each phase is characterized by specific cellular events and is influenced by various factors. The duration of each phase varies between different cell types and is dependent on environmental conditions. The cell cycle is essential for the development and maintenance of multicellular organisms, and its dysregulation can lead to various diseases, including cancer.

it laid-off Wu because of her lack of English back to him for further consideration.

On July 16, 2010, Judge Green issued a Supplemental Decision and Order wherein he fully considered Respondent's defense and found that it had not provided sufficient credible evidence to support its defense.

Respondent excepts to the ALJ Green's finding that it did not meet its burden of sustaining its contention that Respondent selected employees Wu and Lin for layoff because they were not proficient in English. Respondent argues that it presented evidence of its defense, and that ALJ Green's finding is not supported by the record. Respondent's exception is without merit and should be rejected.

Argument

Respondent excepts to ALJ Green's decision mainly on the grounds that he failed to consider Lin and Wu's lack of English proficiency. It argues that ALJ Green is factually incorrect when he stated that Respondent was allowed to testify "under oath, without interruption by either General Counsel or me for hours, he never once stated during his testimony that the reason he chose Lin and Wu for layoff was because they had difficulty with the English language. In fact, he didn't even describe any reason why he laid off either individual." Respondent's exception makes it appear that this is the only reason ALJ Green gave for his decision. In fact, however, it is only one of the six grounds ALJ Green sets forth.

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Respondent relies only upon the instance when it questioned employee Wu about numbers spoken in English. This is the main evidence that Respondent presented in support of its contention. Respondent makes a cogent argument regarding Wu's apparent trouble with English. It highlights an exchange during the hearing in which Wu shows apparent lack of proficiency skill in English. (Tr. 235-236) While following up to a question posed by ALJ Green to Wu, Respondent chimes in that, "That's one of the reasons we lay off these people." (Tr. 234) However, both instances were presented during cross-examination, not during its case-in-chief. While these two instances, at best, raise a question about Wu's, and only Wu's, proficiency in English, they are not nearly sufficient to establish a firm defense. Indeed, despite the exchange with Wu and Respondent's declaration, both ALJ Green and the Board found that General Counsel had established a prima facie case.

In his Supplemental Decision, ALJ Green set forth several reasons why Respondent's English defense fails. He notes that: 1. In a previous case that defense was rejected; 2 Wu and Lin had worked for the Employer for many years and English had never been a problem; 3. Although witness Wu said that she was told her poor English was the reason she was laid-off, this proves only that this is what she was told and does not establish true motive; 4. The self-serving document submitted as Respondent's Ex 2 without more is not sufficient evidence; 5. Respondent was given ample time to put forth a defense but failed

to do so; and 6. Respondent was not credible.¹ The record completely supports the ALJ's findings and Respondent's Exceptions document fails to address these findings. In fact, the remainder of Respondent's Exceptions document highlights the main problem with Respondent's defense. Respondent simply is not credible.

During its case in-chief, Respondent offered no evidence to support its contention. Despite being given four uninterrupted hours, Respondent presented nothing more than a meandering rant filled with ethnic insensitivities, and crude invectives against Regional and Board personnel. (Tr. 579-669). At no time did Respondent follow-up or present any evidence that showed it had any legitimate reason for laying off Wu and Lin. At this point, General Counsel, even in light of Wu's cross-examination, had established its case. It was explained to Respondent what its burden was during its case and what should be covered (Tr. 578-579), yet it failed to do it. Respondent is now basically arguing that the pittance of evidence that was given during cross-examination should be given vastly greater weight now. Its failure to put on any evidence during its case in chief speaks volumes to whether the employees' purported lack of English proficiency was the reason for their selection for lay-off.

The remainder of the Exceptions document shows Respondent's mind-set. It does not argue the merits of case but rather delves into Respondent's belief that it is being persecuted by the Board for no reason. Respondent presented similar arguments and flawed logic during the hearing. A vast majority

¹ In this regard, it is immaterial that Respondent now tries to highlight this defense. ALJ Green found that Respondent is not credible so even if Wu and Lin had difficulty with English, ALJ Green did not believe that it played a role in Respondent's decision to lay-off the employees.

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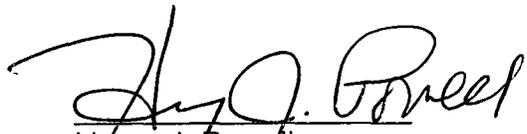
of its time was spent making these and other frivolous arguments. In his supplemental decision, ALJ Green found Respondent not to be credible for this reason and issued his Decision accordingly.

CONCLUSION

For all of the reasons cited above, Counsel for the General Counsel respectfully requests that the Board reject and dismiss Respondent's Exceptions. It is urged that the Board adopt each and every of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Remedy and any further remedy deemed just and proper.

Dated at Brooklyn, New York, August 20, 2010.

Respectfully submitted,


Henry J. Powell
Counsel for the General Counsel
National Labor Relations Board
Two MetroTech Center, 5th Fl.
Brooklyn, New York 11201

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WENQUING LIN, an Individual

Date of Mailing August 20, 2010

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S REPLY TO
RESPONDENT'S EXCEPTION TO THE SUPPLEMENTAL DECISION OF THE ADMINISTRATIVE
LAW JUDGE:**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled documents(s) by regular mail upon the following persons, addressed to them at the following addresses:

REGULAR MAIL

Hon. Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570

Dickens, Inc.
Attn: James Chou
75 Austin Blvd.
Commack, NY 11725

Wenquing Lin
14110 28th Avenue, Apt. 6D
Flushing, NY 11354

Lauraine Alexander

SUBSCRIBED AND SWORN TO ME ON THIS 20TH¹

DESIGNATED AGENT

Preso Blake

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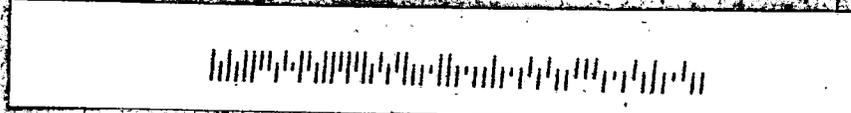
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UNITED STATES GOVERNMENT
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