

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

In the Matter of:)	
)	
CASE FARMS PROCESSING, INC.,)	Case Nos. 8-CA-39152
)	8-CA-39187
and)	8-CA-39257
)	
UNITED FOOD AND COMMERCIAL WORKERS)	
UNION, LOCAL NO. 880.)	
)	

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

Pursuant to §102.46 of the National Labor Relations Board Rules and Regulations, Respondent Case Farms Processing, Inc. (“Case Farms” or “Respondent”) files exceptions to the Decision of the Administrative Law Judge Mark Carissimi (“ALJ”).

1. Case Farms excepts to the ALJ’s crediting of the testimony of Omar Carrion Rivera (“Carrion Rivera”) and Yasha Walesca Rivera Melendez (“Rivera Melendez”) to the extent their testimony conflicted with that of Adolfo Padilla (“Padilla”), Bernard Cooper (“Cooper”), and Ramon Ayala (“Ayala”). (ALJ Decision, p. 18, lines 37-39). The preponderance of the evidence supports the testimony of Padilla, Cooper and Ayala regarding the confrontational incident between Padilla and Carrion Rivera.

2. The ALJ erred in crediting Tim Mullins and Carmen Beltran regarding the alleged statements made by Ayala that Carrion Rivera “didn’t do anything.” (ALJ Decision, p. 19, lines 25-28; 36-40).

3. The ALJ erred in concluding that Carrion Rivera was engaged in protected activity when he confronted Supervisor Padilla over a purely personal matter. (ALJ Decision, p. 21, lines 32-33).

4. Case Farms also excepts to the ALJ's finding that it was not necessary to analyze Carrion Rivera's termination under the Board's *Wright Line* Doctrine. See, *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), Cert. Denied 455 U.S. 989 (1982). (ALJ Decision, p. 25, lines 14-20). Given the facts of this case, failure to utilize *Wright Line* was a clear error.

5. The ALJ erred in finding that even if Carrion Rivera's conduct could be deemed protected under the Act his opprobrious conduct directed at his supervisor did not cause him to lose protection under the Act pursuant to the *Atlantic Steel* Doctrine. 245 NLRB 814 (1979). (ALJ Decision, p. 24, lines 41-46; p. 25, lines 1-12).

6. Accordingly, Case Farms excepts to the ALJ's finding that "by first suspending then terminating Carrion Rivera for his conduct on September 8, the Respondent violated Section 8(a)(3) and (1) of the Act." (ALJ Decision, p. 25, lines 11-12). Contrary to the ALJ's finding, the record is replete with evidence that the termination of Carrion Rivera was lawful.

7. The ALJ erred in crediting the testimony of Yerima Medero Ledesma ("Medero Ledesma") over the testimony of Abel Acen ("Acen"), Stephanie Ajanel ("Ajanel"), and Kimberly Clark ("Clark") that Medero Ledesma and Acen met privately two (2) or three (3) days per week. (ALJ Decision, p. 8, lines 8-12).

8. The ALJ erred in finding that "if an employee was in the training room and went to Acen's office through the door from the hallway, the employee would not be observed by Clark or Ajanel." (ALJ Decision, p. 7, lines 38-39). The evidence submitted into the record does not support this configuration of the building.

9. Accordingly, Case Farms excepts to the ALJ's finding "that Acen did meet with [Medero] Ledesma in his office" because the "configuration of the office would permit such a meeting to occur without being observed." (ALJ Decision, p. 7, lines 41-42; p. 8, line 5). Because the weight of the evidence suggests that no meeting ever took place, Case Farms also excepts the ALJ's finding that Acen violated §8(a)(1) of the Act by stating at these private

meetings that he would “get rid of employees who participated in strikes” and that he did not want employees living in certain areas because Union supporters lived there. (ALJ Decision, p. 8, lines 30-47).

10. The ALJ erred in finding that, even if the private meetings did occur, Acen’s innocuous statement suggesting that an employee should live in the areas of Dover or New Philadelphia amounts to a threatening or coercive statement in violation of §8(a)(1) of the Act. (ALJ Decision, p. 8, lines 30-40).

11. Case Farms excepts to the ALJ’s finding that Acen “confer[ed] upon Yerima Medero Ledesma actual authority to act as the Respondent’s agent with respect to making statements to dissuade employees from engaging a strike in claiming they would not receive wage increase as long as they supported the Union.” (ALJ Decision, p. 9, lines 46-49). Contrary to the ALJ’s finding, the evidence does not support the conclusion that Acen actually communicated to Medero Ledesma a specific act or statement to do or say anything on behalf of Case Farms.

12. Case Farms excepts to the ALJ’s finding that because “Acen gave [Medero] Ledesma actual authority to act as spokesman on behalf of the Respondent and instructed her as to what to say, it is unnecessary to establish that she also had apparent authority to act on Respondent’s behalf.” (ALJ Decision, p. 10, lines 30-32). As set forth in Exception 10, there is no evidence to support a finding of “actual authority.” Accordingly, the only evidence to establish agency is the doctrine “a parent authority” however, the record is replete with evidence showing how a parent authority was not conferred.

13. Accordingly, Case Farms excepts to the ALJ’s finding that Medero Ledesma was an agent of Case Farms under §2(13) of the Act. (ALJ Decision, p. 9, lines 46-51).

14. Because the weight of the evidence establishes that Medero Ledesma was not an agent of Respondent, Case Farms excepts to the ALJ’s finding that “Respondent, through its

agent [Medero] Ledesma, violated Section 8(a)(1) of the Act by telling employees that as long as they belong to the Union their salary would not increase.” (ALJ Decision, p. 10, lines 41-44).

15. The ALJ erred in finding “[Medero] Ledesma’s testimony regarding Acen’s statements to her in late September, 2010 to be credible.” (ALJ Decision, p. 14, lines 41-42). Accordingly, even assuming that evidence could support the allegations that Medero Ledesma met privately with Acen (which it does not—see Exception 9), Case Farms excepts to the ALJ’s finding “that the Respondent, through Acen, violated Section 8(a)(1) of the Act as alleged in paragraphs 9(G)(H) and (I) of the Complaint.” (ALJ Decision, p. 14, lines 46-48).

16. Case Farms excepts to the ALJ’s finding that “Cooper told [Adolfo] Jimenez that he could not come to the Human Resources office during his breaks and should return to the break room... violates Section 8(a)(1) of the Act...” (ALJ Decision, p. 29, lines 33-35). Contrary to the ALJ’s finding the record evidence does not support this conclusion as a matter of law.

17. The ALJ erred in finding that Case Farms did not adequately repudiate the §8(a)(1) violation allegedly arising out of Bernard Cooper’s statements to Adolfo Jimenez (“Jimenez”) under *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). (ALJ Decision, p. 29, lines 38-51). The ALJ’s rigid application of the doctrine contradicted the Board’s expectation to avoid applying *Passavant* mechanically or technically.

18. Case Farms excepts to the ALJ’s finding that, notwithstanding the *Passavant* repudiation doctrine, by “restricting Jimenez from timing the line and ordering into the break room” the “Respondent, through Cooper, violated Section 8(a)(1) of the Act.” (ALJ Decision, p. 34, lines 43-46). Once again, the ALJ erred in strictly applying the *Passavant* standards: “Respondent’s actions in this regard are salutary but are insufficient to comply fully with the *Passavant* standards.” (ALJ Decision, p. 35, lines 12-14).

19. Case Farms excepts to the ALJ’s finding that by “making an unspecified threat of reprisal if Jimenez persisted in claiming his right to time the line, the Respondent, through Cooper, further violated Section 8(a)(1) of the Act.” (ALJ Decision, p. 34, lines 46-48). Contrary

to the ALJ's findings, the statement "one more word from [you] and [I] [don't] know what [will] happen," viewed in light of Board precedent, does not rise to the level of a §8(a)(1) violation. (ALJ Decision, p. 32, lines 38-39).

Case Farms submits herewith a Brief in support of its exceptions this 14th day of October, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on October 14, 2011, a copy of the foregoing *Respondent's Exceptions to Administrative Law Judge's Decision*, was filed with the NLRB's electronic filing system. Notice of filing will be sent to all Parties by operation of the NLRB's electronic filing system where the Parties then may access this filing.

Respectfully submitted,

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