

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

REMINGTON LODGING & HOSPITALITY, LLC,
d/b/a THE SHERATON ANCHORAGE

and

UNITE-HERE! LOCAL 878, AFL-CIO

Cases 19-CA-32148
19-CA-32188
19-CA-32222
19-CA-32238
19-CA-32301
19-CA-32334
19-CA-32337
19-CA-32349
19-CA-32367
19-CA-32414
19-CA-32420
19-CA-32438
19-CA-32487
19-CA-32598
19-CA-32600
19-CA-32609

**ACTING GENERAL COUNSEL'S
BRIEF IN SUPPORT OF CROSS-EXCEPTIONS**

Counsel for the Acting General Counsel (CAGC), pursuant to Section 102.46(e) of the Board's Rules and Regulations, files the following Brief in Support of Cross-Exceptions to the Decision of Administrative Law Judge Gregory Z. Meyerson (the ALJD) [JD(SF)-32-11], issued on August 25, 2011, in the above captioned case.¹ Under separate cover, CAGC also files with the Board this date her Answering Brief to Respondent's Exceptions (AGC's Answering Brief).

¹ Remington Hospitality & Lodging, LLC is referred to as Respondent. UNITE-HERE! Local 878, AFL-CIO is referred to as Union. References to the Transcript are designated as (TR.) with the appropriate page citations. References to the ALJD show the applicable page number.

It is respectfully submitted that in all respects other than the ALJ's failure to find that Respondent violated §§ 8(a)(1) and (5) of the Act as set forth below, the findings of the Administrative Law Judge (ALJ) are appropriate, proper, and fully supported by the credible record evidence.

A. FACTUAL BACKGROUND

Upon taking over management of the Sheraton Anchorage, where Charging Party Union had represented a wall-to-wall unit for over thirty years, Respondent committed "numerous and serious" unfair labor practices culminating in its managers coercing employees into signing a decertification petition and then withdrawing recognition from the Union based on that petition. (ALJD 94) Respondent's unfair labor practices included: discharging four Union leaders and disciplining twice as many for engaging in legal Union boycott activities; confiscating Union buttons, assigning Unit members dangerous "security guard" duties with no training; promulgating a raft of illegal workplace rules without notice to the Union; and declaring an unlawful and premature impasse to bargaining and thereafter implementing its own health care plan. (ALJD 67-79, 81-81, 83-84)

Respondent's conduct amounted to a total disregard for the Act and its protections, and wholly warrants the 10(j) injunction currently being sought by the Region to enjoin its illegal practices. During the course of its all-out assault on the Union (which unfortunately continues to date), Respondent also engaged in certain

violations the ALJ found to lack merit. What follows is a factual summary of these allegations:

1. Respondent's Subcontracting of Unit Work²

The Hotel's bellmen carry guest luggage, deliver faxes, valet park cars and provide concierge services. Until August 2009, they also performed another duty: driving the Hotel's downtown courtesy van. (ALJD 25:14-17) As the ALJ found, depending on the season, van driving comprised a significant portion of their duties. (ALJD 25:17-18) Indeed, as one bellman testified, driving duties comprised, on average, one-third of the bellmen's daily work. (TR 451:2-3; 1186:1-2; 1197:13-15) Driving duty was considered a perk, since it allowed the bellmen to get off their feet, take a break and get away from the Hotel lobby; most importantly, however, it was an excellent source of tips. As bellman Troy Prichacharn testified, a bellman's tips from driving would be between \$18 to \$25 per day in the winter and between \$40 to \$45 in the summer. (TR 25:21-25)

It is undisputed that, without providing the Union with prior notice or the opportunity to bargain, on August 17, 2009, Respondent's Sales Director instructed its eight bellmen to stop driving the van. In doing so, it reduced 30% of the work of these eight employees. From that point on, Respondent subcontracted out the van driving function to a company called "Valentino Limousine Service" or "VLS." VLS set up a desk inside the Hotel lobby, and the bellmen were instructed to advertise VLS' services to the Hotel guests and to keep the entryway clear for the VLS vehicles. Occasionally, when the bellmen are especially busy, VLS drivers arriving with Hotel guests even

² This alleged violation is set forth in ¶ 9(b) and ¶ 7(b)(viii) of the May 28, 2011 Complaint.

loaded up the luggage carts and transferred them up to the guests' room – clearly a bellman's job. (TR 25:27-38; 677-78 and R 12)

In defending this unilateral subcontracting, Respondent relies exclusively on a provision of the parties' expired contract, which states as follows:

If analysis of its operation by the Employer indicates contracting out is reasonably expected to result in a reduction in cost, increased efficiency in the delivery of services to the public, or otherwise benefit the employer, and *it is reasonably expected to result in the displacement of any regular employee*, the Employer shall first notify the Union in writing of the proposed action.

(GC 5) Upon such notification, the contract requires Respondent to provide the Union documents on which its cost analysis is based, and entitles the Union to “meet and confer” rights and notice rights to affected employees. *Id.* It is undisputed that, during the parties' collective bargaining negotiations only weeks earlier, Respondent had not raised the issue of subcontracting the bellmen's work with the Union, even though it had covertly attempted to amend the parties' contract that would allow them to do so without the contract's notice and meet-and-confer protections. (TR 452:19-24; see GC 38 at 10)

Respondent offered no evidence at hearing that, at the time it decided to subcontract the bellmen's duties, it was “reasonably expected” that no employees would be displaced. Instead, it offered the testimony of a sole bellman (which the ALJ found “confusing”) who attempted to recall (with refreshing from Respondent's business records) how, in fact, the subcontracting had affected the bellmen's employment status. Based solely on this testimony, the ALJ found that there had in fact been no actual

diminution in the number of bellmen from August to November 2009, and that, therefore, Respondent had not been required to notify the Union before subcontracting:

The Respondent is not required to notify the Union, and implicitly bargain with the Union, unless the subcontracting 50 would reasonably result in the displacement of bellmen. It did not.

(TR 25:51-56; 79:48-50; TR 767-690) Respondent, however, offered no testimony regarding the expected impact of the subcontracting at the time that decision was taken.

2. Housekeeper Incentive Plan³

Respondent employs over 30 housekeepers, its largest job classification. (R 106) On March 18, 2010, Respondent implemented an “incentive bonus plan” that applied to its housekeepers. (ALJD 37:17-18) The plan was announced by means of a memorandum to the Hotel’s entire housekeeping department from General Manager Artiles, which was posted in the department as well as on the door of each floor’s housekeeping supply closet. (R 106) The written plan stated:

In an ongoing effort to drive our Guest Satisfaction scores up, I am putting a new incentive into place. If we, as a hotel, receive a 9.0 or better on Cleanliness of Hotel **AND** Cleanliness of Room and Bath for the month then I will minus a room for **ALL** Housekeepers for the following month. Meaning you will only be responsible for 16 rooms for the following month.

(ALJD 37:20-24; GC 96 (emphasis in original); TR 5150:2-25; 5151:1-4; 5163:8-19; 5165:8-17) The memorandum also promised that each housekeeper would receive a \$25.00 gift card if the overall goal for the Hotel was met. Finally, Artiles offered that, if an individual housekeeper’s name was mentioned positively in an online guest survey, she would receive another \$25.00 gift card. The memorandum indicated that the housekeepers would not have to wait until the following month to get started; instead, if

³ This alleged violation is set forth in ¶ 7(b)(viii) and ¶ 9(d) of the May 28, 2010 Complaint.

the housekeepers' scores were 9.0 the very next day, March 19, 2010, they would only be required to clean 16 rooms in April. (ALJD 37:24-27; GC 96)

The issue of how many rooms the Hotel's housekeepers would be required to clean was hardly insignificant; the parties had negotiated unsuccessfully for months over this very issue. Indeed, Respondent, which had previously identified the minimum room requirement as a "key impasse issue," claimed to be "deadlocked" with the Union over the minimum room requirement. (See JX 2:00104-00110) It is undisputed that Respondent had never proposed the "incentive plan" concept during the failed negotiations. Instead, after claiming "deadlock" with the Union over housekeeper minimum room requirements, Respondent implemented a compromise proposal it had never bothered to propose at the table.

There is also no dispute that the incentive plan was widely disseminated to affected employees. In addition to being posted extensively in writing, the new plan was explained in person to assembled groups of housekeepers by Eduardo Canes, the Hotel's Director of Operations. (ALJD 37:29-31) Canes made sure to tell the housekeepers that some people would "not be in agreement with the [new] plan," but it was now in effect. (ALJD 37:31-32) As the ALJ acknowledged, this plan was then put into effect and certain housekeepers benefitted from it by having their room requirement reduced. (ALJD 37:43-48; see also TR 5152:21-25; 5153:1-18; 5165:6-8; 5179:7-16; 5180:2-9, 22-25; 5181:1-5)

Based on arguments put forth by Respondent, the ALJ concluded that the incentive plan was subsequently withdrawn. In fact, the only evidence offered in this regard was hearsay offered by Respondent's "consultant," Mary Villareal, who visited

the Hotel only one time after March 2010, and who admitted that she had no basis for believing that the program had been discontinued, except that she had been told so by

Artiles and Fullenkamp:

Q: Do you know for a fact it was never implemented?

A: Yes.

Q: How do you know that?

A: Because I spoke to Mr. Artiles about it.

Q: Okay. So --

A: As well as Jamie Fullenkamp.

Q: Okay. So you don't have firsthand knowledge but according to what you've heard from them that's what you're basing that conclusion on?

A: Yes.

(TR 6869:6-15; see *a/so* TR 6864-65) Based on this testimony, the ALJ concluded that, "[t]he plan was never fully implemented, and apparently was in effect for only 24 hours."

(ALJD 81:11)

3. Artiles' Denigration of Charging Party Union

a. The March Jade Restaurant Meetings

Following Respondent's premature impasse declaration and leading up to its illegal withdrawal of recognition from the Union, General Manager Artiles decided to hold group meeting with employees, ostensibly for the purpose of explaining Respondent's new health care plan. (ALJD 39:52-56) Numerous employees testified, however, that Artiles used the meetings, about five of which were held in March 2010, to denigrate the Union in the eyes of its members. As employees testified:

COMPL. ¶ EMPLOYEE TESTIMONY

- 15(e) Artiles asked the employees, "what has the Union done for you?" No one responded, and Artiles continued, stating that he "wore the pants" in the hotel, an expression that, in Spanish, refers to an individual who can do anything he wants to his employees. He then said "he was the boss and he could fire or terminate anyone that he wanted to." He then said that he wanted the Union "out." (TR 2558:12-19; 4742:12-18; 4743:1-3; 4750:4-5)
- 15(d) After asking the employees if they knew what the Union did with their dues, Artiles said the dues were "for them to buy new cars with." (TR 614:2-7; 619:13-17; 1039:14-18)
- 15(c) Referring to the discharged Union leaders-discriminatees, he asked, "have you seen them around here, have they come around here, have they been back?" No employee responded. (TR 2558:20-25; 2559:1) In another meeting, he said it had been two months and the Union had not brought the four discharged workers back to work. (TR 1047:23-25; 1048:1-7) In another meeting, In response to an employee's question about whether the four discharged employees would be coming back to work, Artiles said it was his hotel, and he would run it the way he wanted. (TR 1047:11-24)
- 15(e);
15(b) When an employee asked if Respondent was going to continue to respect seniority, Artiles responded yes, but added that, if he wanted to, he would take it away. (TR 2559:7-13) He then said he could return the 15-room standard for housekeepers, but he was not going to do this to "bother" or "molest" the Union. (TR 622:18-21)

Contrary to the ALJ's finding, Artiles never explicitly denied making comments about the Union beyond the health insurance discussion. In fact, when asked, he simply "could not recall." (TR 6757:14-16) The employee witnesses who testified about the luncheons testified in a variety of non-English languages, consistent with the fact admittedly selected them for the meetings because of their limited English. (TR 6705:9-15; 6733:15-17)

b. The July Jade Restaurant Meeting

On July 30, 2010, following Respondent's illegal withdrawal of recognition from Charging Party Union, Artiles hosted another Jade Restaurant lunch with twelve Hotel employees. (TR 2825:2-9; 2826:1-6) As the witnesses testified, the July lunch was different from the lunches Artiles had held months earlier. Instead of sitting with the workers, Artiles stood while he talked. (TR 4512:8-19; 4558:3-5) And everyone was served the same meal, whereas attendees at the March lunches were allowed to chose their own dishes off the menu. Audelia Hernandez, who showed up for two of the March lunches, testified that she was "humiliated" when she was told each time she could not attend. She did, however, attend the July lunch. (TR 2823:6-2825:1-12) Hernandez and others plainly described the events of the July 30 lunch as follows:

Artiles, speaking in Spanish, he told them that he – and the Hotel – were anti-union, and that it had been two months since the employees had had a union. (TR 2826:11-16) Next, in English, he said told the employees that, if they wanted a union, the door was open for them to leave. (TR 2826:17-20; 4558:4-6; 5166:13-18) Even those employees who spoke primarily Spanish, such as Audelia Hernandez, understood his meaning. (TR 2830:18-25; 2831:1-3; 2835:18-22)

Switching back to Spanish, he said that there were "ignorant people" spreading the word that there was still a union at the hotel, but that this was not true. (TR 2827:3-7; 4511:5-11; 5166:8-11) He then said that, in two weeks, there was going to be a court hearing, because the Hotel had taken the Union to court. (TR 2827:24-25; 2828:1) Once again, when called upon to deny his comments, Artiles "could not recall" whether he had attended such a meeting. (ALJD 49:26-28)

Despite Artiles' failure to deny making the statements attributed to him, the ALJ dismissed each of the alleged § 8(a)(1) violations based on his comments at this lunch. Without discrediting any of the employee witnesses, the ALJ instead concluded that they were "likely confused" and were remembering one of the lunches held by Artiles in March. (TR 50:11-14) Here is an example of a witness the ALJ found was likely actually "misremembering" one of Artiles' lunches from March, and not an additional one from July 31:

Q: What did Mr. Artiles say?

A: He said that he was there that day to answer questions because there were some ignorant people who were giving out bad information.

Q: Anything else that he said?

A He said that as of July 2nd the hotel was no longer unionized.

Q: Okay. And anything else?

A: He also said that we live in a free country and that you're free to work union or nonunion but that for those who wanted union the door was open and we could leave at any time.

(TR 5166:11-21) Thus, the ALJ simply "wrote off" the July 31 meeting, rather than making credibility determinations about witnesses who clearly testified about the event.

B. LEGAL ANALYSIS

1. The ALJ Erred by Failing to Find a Violation of § 8(a)(5) of the Act Based on Respondent's Subcontracting the Bellmen's Driving Duties

As the ALJ found, Respondent subcontracted its bellmen's driving duties without consulting with the Union, and there is no dispute that this action was significant and material to their terms and conditions of employment. The ALJ went on, however, to allow Respondent to rely on a contractual provision allowing this action, without requiring Respondent to prove the explicit legal predicate required by that contractual provision. Indeed, instead of determining whether reducing the work of eight bellmen by 30% would be "reasonably expected" to result in one of these employees being discharged, the ALJ relied exclusively on the admittedly confusing testimony of a single bellman to find that, for at least the three months following Respondent's subcontracting decision, no bellmen were actually discharged from the Hotel. Based on this, the ALJ concluded that Respondent had proven that, at the time it determined to subcontract their work, it had reasonably expected for this to be the case.

The ALJ erred in allowing Respondent to "reverse engineer" its evidence in this manner. Indeed, to rebut the raw numerical evidence, any number of Respondent's witnesses seemingly could have testified as to what Respondent's state of mind was at the time of the decision, but none did. As such, the recollection of a single bellman as to the bellmen complement three months following the decision simply has no bearing on whether, at the time of the subcontracting, it was reasonably anticipated that no bellmen would be discharged during this period. To countenance the ALJ's logic would

essentially permit Respondent to defend its notice-free subcontracting without satisfying the very terms Respondent agreed to.

Because the record evidence indicates that it was, in fact, reasonably expected that the subcontracting would result in the loss of a bellman position, the ALJ's finding that Respondent's subcontracting bellman duties did not violate the Act should be reversed.

2. The ALJ Erred By Failing to Find a Violation of § 8(a)(5) of the Act Based on Respondent's Unilateral Implementation of a Performance Incentive Plan

The ALJ concluded, based wholly on hearsay evidence from a witness who admittedly had no personal knowledge of the fact, that the housekeepers' incentive plan was somehow discontinued after being in effect for twenty-four hours. Although Artiles and Cannes, who were responsible for the plan, each testified extensively during the hearing, neither of them offered this fact. Only Respondent's former consultant Villareal spoke on this issue, testifying that she "knew" the plan was discontinued, because Artiles and Fullenkamp had "told her so." (TR 6869:6-15; see *also* TR 6864-65) Further, the "twenty-four hour" time frame cited by the ALJ is totally unsupported by the record. Finally, despite its extensive "roll out" of the incentive plan, Respondent offered absolutely no evidence to show that any claimed "discontinuation" was announced to the affected employees.

Even if Respondent's claim that it somehow "mistakenly" implemented the incentive plan is taken at face value, this is simply insufficient to excuse its conduct. Indeed, Respondent's unsupported claim that it has revoked the policy does not in any way correct its application to individual housekeepers, and there is absolutely no

evidence that Respondent undertook a published repudiation of the plan. See *North Hills Office Services, Inc.*, 344 NLRB No. 134, slip op. at fn 11 (2005); *Claremont Resort, Inc.*, 344 NLRB No. 105, slip op. at 1 (2005); *Passavant Memorial Hospital*, 237 NLRB 138 (1978). As such, the ALJ's finding that the plan was discontinued is flawed in the first instance.

The ALJ additionally erred in finding that the impact of the incentive plan was limited and therefore "*de minimis*." Respondent's incentive plan ensured that its housekeepers knew that it could alter their daily workload at its whim, after Respondent had declared impasse on that very issue. Viewed in this context, Respondent's conduct was anything but *de minimis* under the Board standard.

In determining whether certain conduct is *de minimis*, the Board takes into consideration the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors. *Waste Automation*, 314 NLRB 376 (1994), citing *Metz Metallurgical Corp.*, 270 NLRB 889 (1984); *Caron Intl.*, 246 NLRB 1120 (1979). Where the act in question is committed by a high ranking official of the employer and is disseminated to a large portion of the bargaining unit, the Board regards such facts as "particularly significant." *Id.* citing *Cartridge Actuated Devices*, 282 NLRB 426, 428 (1986).

In addition, the Board has recognized that the "material, substantial and significant" nature of a unilateral change, such as Respondent's incentive plan implementation, must be evaluated against its "natural context," including an illegal withdrawal of recognition from the employees' union. *Microimage Display Division of Xidex Corp.*, 297 NLRB 110, 111 (1989), *enfd.*, 924 F.2d 245 (D.C. Cir. 1991) (finding

unilateral change violation based on change to lunch break policy that lasted only two days, in context of illegal withdrawal of recognition). Thus, as the Board has stated:

[w]hen an employer takes action “as part of its concerted strategy to weaken and discredit the union in the eyes of the employees” it is proper to look at the other elements of that strategy in order to determine whether the issue is material and substantial.

Id.

A unilateral change that, by its terms, flouts the employer’s bargaining duty should not be regarded as *de minimis* in any event. See, e.g., *EIS Brake Parts*, 331 NLRB No. 195, *60 (2000) (giving bonus meals to reward productivity achievements at the time the parties are negotiating over the Respondent’s productivity proposals is destructive of the bargaining process). Here, Respondent’s housekeeper incentive plan, viewed in the context of its multiple, additional unfair labor practices, was meant to telegraph to employees that Charging Party (the target of a management-assisted decertification campaign) was useless to them. This is especially so, considering that a mere week earlier, Respondent had claimed impasse on the very contentious issue its unilateral plan addressed. As such, the ALJ erred by finding that the plan’s implementation did not amount to an illegal unilateral change.

3. The ALJ Erred By Failing to Find Seven Separate Violations of § 8(a)(1) of the Act Based on the Conduct of Respondent’s General Manager, Dennis Artiles.

a. The March Jade Restaurant Meetings

Throughout his analysis of Artiles’ conduct at the March Jade Restaurant meetings, the ALJ cited both Counsel for the Acting General Counsel and Respondent’s widely conflicting versions of the facts without, in most cases, resolving those conflicts or stating which facts or witnesses he credited. See *Lewin v. Schweiker*, 654 F.2d 631,

635 (9th Cir. 1981) (courts have consistently required explicit credibility findings where such credibility is a critical factor in the decision). Indeed, while the ALJ claimed to credit Artiles' various "denials" of making the remarks attributed to him, he based this on no more than a boilerplate rationale that Artiles seemed like a sensible business manager. See *NLRB v. Cutting, Inc.*, 701 F. 2d 659, 666-667 (7th Cir. 1983) (rejecting ALJ's credibility findings because the judge gave no reasons for crediting witnesses, and thus the findings "provide no basis for assessing the relative credibility of the witnesses"). Based on this non-recollection, the ALJ concluded that none of the alleged § 8(a)(1) statements were made.

In fact, although Artiles was recalled numerous times by Respondent's counsel, he never in fact made the specific denials attributed to him by the ALJ. When asked by Counsel for the General Counsel on cross examination whether, during the meetings, he had made any remarks about the Union outside the context of health insurance, he simply stated that he could not recall. This is hardly a denial. As such, the ALJ's finding that the alleged § 8(a)(1) violations did not occur is simply unsupported. See *K-Mart Corp. v. NLRB*, 62 F.3d 209, 213 (7th Cir. 1995) (judge's "boilerplate comment concerning general credibility determinations," without further explanation, was inadequate for review).

When it came to evaluating the employees' testimony, the ALJ apparently became overwhelmed by the task; he found the testimony which he found "confusing" and "hard to evaluate." (ALJD 85:24-25) Considering that Artiles had deliberately selected individuals with limited English for his anti-Union commentary, it is hardly surprising that this was the case. The Act's protections are not reserved for those with

perfect diction, and the ALJ's duty was to evaluate the testimony, not simply to state that it was too difficult to do so.⁴ By essentially ignoring (as opposed to weighing, or even discrediting) the employee-witnesses' testimony, the ALJ failed to make explicit factual and credibility findings. In cases such as this, where the administrative law judge fails to resolve a significant discrepancy in testimony by crediting or discrediting conflicting testimony, the Board may undertake its own analysis of the evidence. See, e.g., *U.S. Postal Service*, 301 NLRB 233, n.3 (1991). Counsel for the General Counsel suggests that such a review will likely indicate that, contrary to the ALJ's conclusions, Artiles did, in fact, engage in the very conduct he failed to deny.⁵

b. The July Jade Restaurant Meeting

Without explicitly discrediting a single witness, the ALJ essentially "wrote off" testimony regarding Artiles threats and disparagement following Respondent's illegal decertification campaign. Faced with an alleged bad actor who "recalled nothing" regarding the lunch and numerous, consistent accounts of the same event, the ALJ essentially punted on this issue, rationalizing that, likely, each of the witnesses was "confused" and was in fact recalling a lunch held months earlier in March, including a witness who specifically testified that she had been turned away from two lunches in March and only allowed to attend the July lunch. There is no cogent rationale presented for such a conclusion; the ALJ seems simply to suggest that housekeepers in Anchorage are simply incapable of remembering when they attended a paid luncheon

⁴ The ALJ also claimed the testimony was "inconsistent" and "contradictory," but gave no examples of this. (ALJD 85:4-25)

⁵ It should be noted that the Board's review of such allegations may well lead it to determine that they provide additional support for the finding that Respondent was not privileged to withdraw recognition in light of its serious, unremedied unfair labor practices.

with the top official at the Hotel where they worked and simply confused a summer day on July 30, 2010 with an early spring date in mid-March 2010.

Ultimately, the ALJ abandoned the task of weighing the varying accounts of a particular incident to determine which version was credible. Instead, he simply concluded, based on no specific rationale, that every one of the employees who testified about a meeting in which Artiles bragged that there was “no more Union” at the Hotel actually occurred in March – over four months before Respondent withdrew recognition. Ultimately, the ALJ substituted such rationalizations for fact finding and credibility determinations.⁶ Under the circumstances, the Board may undertake its own analysis of the evidence, which Counsel for the Acting General Counsel will show that, despite the ALJ’s cursory conclusions, Respondent, by its General Manager, in fact violated the Act as alleged.

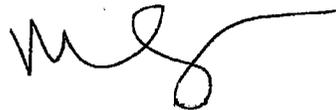
⁶ The ALJ’s “back-up” rationale for dismissing certain of these allegations stemming from the July lunch essentially amount to his summary conclusion that what Artiles said at a lunch that apparently never occurred was simply innocuous. For example, according to the ALJ, Artiles misrepresenting the instant ULP action as a lawsuit in which Respondent “had to take the Union to court,” was in no way coercive or derogatory, even when accompanied by a threat that Union supporters could “find the door.” Likewise, the ALJ concluded that an employer that brags to its employees about their no longer being represented, even when their status resulted directly from the employer’s own decertification efforts, commits a “harmless” act.

C. CONCLUSION

Based upon the above facts and legal analysis, Counsel for the Acting General Counsel respectfully submits that the ALJ erred by failing to find that Respondent, by Artiles, violated § 8(a)(1) as alleged herein and violated § 8(a)(5) by subcontracting unit work and implementing a new incentive plan. Counsel for the Acting General Counsel asks that the Board find that Respondent engaged in these unfair labor practices and issue an appropriate order remedying them.

Dated at Seattle, Washington, this 17th day of November 2011.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the **ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF CROSS-EXCEPTIONS** was served by e-file and e-mail on the 17th day of November 2011, on the following parties:

E-FILING

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