UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW	)	
Charging Party,	) **Case Nos.**	**16-CA-27742 and 16-CA-27790**
FLEX-N-GATE TEXAS, LLC	)	
Respondent.	)	

RESPONDENT FLEX-N-GATE'S EXCEPTIONS TO ALJ'S DECISION

Pursuant to Section 102.46 of the Board's Rules and Regulations, Respondent Flex-N-Gate Texas, LLC takes exception to the ALJ's Decision dated December 28, 2011 with regard to the following portions of the Decision:

1. There are approximately 80 employees who work at the Arlington facility. (ALJ 3).[1]

2. Rainey testified that Superintendants David Mitchell (Mitchell) and Brian Holland (Holland) observed him in the parking lot passing out leaflets and talking with employees. (ALJ 4).

3. Rainey also recalled that he spoke with both Mitchell and Holland about the Union and told them that he had been the employee who initially contacted the Union. (ALJ 4).

4. Rainey testified that no other employees wore as many buttons as he wore. (ALJ

[1] Citations to "ALJ" followed by a page number are to the ALJ's December 28, 2011 Decision.

4).

5. Connolly was aware that employees were wearing union shirts and that someone was wearing a shirt with Luckie's name on it. (ALJ 5).

6. Even though Lloyd answered that he was alright, Schmidt asked again and continued to look at the union button on the left side of Lloyd's chest. (ALJ 5).

7. When Schmidt left Lloyd he walked back to where Luckie, Holland, and Fishback were standing. After Schmidt said something to them, they all three looked over at Lloyd. (ALJ 5).

8. Respondent also distributed company shirts and stickers with the wording "No means no." (ALJ 5).

9. Lloyd testified that each day during the campaign, Supervisors Workman and Lee handed out the "No means No" stickers to employees. (ALJ 6).

10. Even though [Lloyd] declined the stickers, these supervisors repeated their inquiry. (ALJ 6).

11. [Lloyd] specifically recalled that after he declined Lee's inquiry, Lee continued to ask jokingly if he wanted a sticker. (ALJ 6).

12. [Lloyd] testified that supervisors Workman and Margaret Johnson offered him the company stickers during the campaign. (ALJ 6).

13. Nickerson testified that a week before the election, a person he identified as Henry asked him if he wanted a "No" sticker approximately once or twice. (ALJ 6).

14. Although Nickerson did not identify the individual's last name, he confirmed that the individual was a part of the office personnel or supervision. (ALJ 6).

15. Respondent admits that Henry Bates is a quality supervisor and Respondent presented no evidence to show that there was a nonsupervisory individual associated with Respondent's office whose name was also "Henry." (ALJ 6).

16. Inasmuch as Nickerson acknowledged in his hearing testimony that he did not know whether "Henry" was designated as a supervisor or part of the office personnel, I do not find that his testimony is undercut or contradicted by his affidavit testimony. (ALJ 6).

17. [Luckie] contended that his staff was not trained to go to employees and ask the employees if they wanted the stickers. (ALJ 6).

18. As neither Bates nor Workman testified at the hearing, the testimony of Nickerson, Garcia, and Lloyd remains unrebutted with respect to the actions of Bates and Workman. (ALJ 7).

19. Although Lee denied that he ever asked an employee if they wanted a sticker, he also could not recall whether he had spoken with Lloyd about the union despite the fact that he spoke with Lloyd each day. (ALJ 7).

20. Thus, crediting the unrebutted testimony of Nickerson, Garcia, and Lloyd, and finding an insufficient basis to credit Lee's denial, I find that Respondent's supervisors interrogated employees by asking them whether they wanted an antiunion sticker as alleged in the complaint. (ALJ 7).

21. In the instant case, the employees approached by Workman, Bates, and Lee had to make an observable choice to support the Union or Respondent and in doing so, they were coerced into relinquishing their Section 7 rights. (ALJ 8).

22. Accordingly, I find that Respondent unlawfully interrogated its employees by asking them if they wanted an antiunion sticker as alleged in complaint paragraphs 7(a), (b), and (c). (ALJ 8).

23. Castaneda testified concerning two conversations that he had with Luckie prior to the September 22, 2010 election. (ALJ 11).

24. Both conversations occurred in Luckie's office with only Castaneda and Luckie present. (ALJ 11).

25. In describing one of the conversations, Castaneda testified that while he was in the office, Luckie asked him how he felt about the Union. (ALJ 11).

26. In an affidavit given to the Board during the investigation of the charge, Castaneda also testified concerning a second conversation with Luckie. (ALJ 11).

27. In the affidavit he testified that while he was in the office, Luckie asked him whether he wanted the Union. (ALJ 11).

28. He also recalled that Luckie told him that he didn't want Castaneda to support the Union. (ALJ 11).

29. When Castaneda asked Luckie "what is better," Luckie replied that the employees make decent money at the facility. (ALJ 11).

30. He added that if Castaneda had a problem, he should come to Luckie and Respondent would fix it. (ALJ 11).

31. Castaneda's undisputed testimony reflects that he went to Luckie's office to talk about something other than the Union. (ALJ 12).

32. Behind closed door, Luckie took the opportunity to inquire about Castaneda's union sentiments. (ALJ 12).

33. In fact, when Luckie asked him how he felt about the Union, Castaneda acknowledged that he had no knowledge about the Union. (ALJ 12).

34. During the second conversation, Luckie told Castaneda that he did not want him to support the Union. (ALJ 12).

35. When Castaneda asked Luckie "what is better," Luckie told him that if he had a problem to come to him and Respondent would fix it. (ALJ 12).

36. Thus, based upon the total record evidence, I find that Luckie unlawfully interrogated Castaneda concerning his union sympathies and promised unspecified benefits if he refused to support the Union as alleged in complaint paragraph 7(f)(i) and (iii). (ALJ 12).

37. Luckie testified that Connolly initially discussed his idea of eliminating some of the team leaders in approximately the third week of August. (ALJ 14).

38. As discussed above, the evidence establishes that Rainey, Irving, and Lloyd engaged in activities that were protected by the Act. (ALJ 14).

39. Rainey testified without dispute that in a conversation with supervisors Holland

and Mitchell, he disclosed that he had been the employee who had first contacted the Union because he had believed that it would be good for the employees. (ALJ 15).

40. He also testified without contradiction that supervisors observed him distributing union literature and cards to employees in the plant parking lot. (ALJ 15).

41. Furthermore, Rainey was one of the most outspoken employees in Respondent's mandatory employee meetings during the Union's campaign period. (ALJ 15).

42. Other than Rainey, Irving wore more union buttons on his clothing than any other employees. (ALJ 15).

43. Although the record reflects that in comparison to Rainey and Irving, Lloyd was not as active or as well known a union supporter, counsel for the Acting General Counsel asserts that Respondent's supervisors and managers were aware that Lloyd supported the Union. (ALJ 15).

44. On the one occasion when he wore the union button, he garnered the attention of Schmidt, Holland, Fishback, and Workman. (ALJ 15).

45. Although none of them said anything to him about his wearing the button, Schmidt walked over to where he was standing and appeared to be looking at the button as he spoke with Lloyd. (ALJ 15).

46. When he returned to the company of Fishback, Holland, and Workman, all four of the supervisors directed their attention to him. (ALJ 15).

47. It is reasonable that because he had not been a demonstrative union supporter

previously, [Lloyd's] wearing the button caught the supervisors' attention. (ALJ 15).

48. When Lee and Workman offered Lloyd the "No means no" stickers, Lloyd always declined. (ALJ 15).

49. Lloyd also testified that during one of Connolly's visits to the plant during the campaign, Connolly approached him and asked him to explain his problems with the situation at the plant. (ALJ 15).

50. When Lloyd told Connolly about his frustration with nothing resulting from evaluations and recommendations for 4 years, Connolly remarked that it seemed as if the team leaders were having all the problems. (ALJ 15).

51. Connolly then wrote down Lloyd's comments before leaving to talk with other employees. (ALJ 15).

52. Despite the fact that Respondent asks that I draw this adverse inference, I also note that Respondent's counsel had the opportunity to explore this denial and yet never asked this same question during his examination of Connolly. (ALJ 16).

53. Clearly, as the alleged decision maker and the highest level supervisor testifying in this proceeding, Connolly was an adverse witness for counsel for the Acting General Counsel and counsel for the Acting General Counsel had no duty to make such inquiry. (ALJ 16).

54. Respondent's failure to gain a denial of knowledge from Connolly; a witness distinctly under Respondent's control, however, presents a far more compelling basis to draw an adverse inference. (ALJ 16).

55. As evidenced by Lloyd's testimony, Connolly was present at the plant and interacted with employees during the union campaign. (ALJ 16).

56. With a total of only 80 employees, it is reasonable that Connolly was fully aware of those employees who openly demonstrated their support for the Union. (ALJ 16).

57. Furthermore, it is not essential that Connolly specifically acknowledged that he was aware of the union activity by Rainey, Irving, and Lloyd. (ALJ 16).

58. This knowledge is established through Luckie or any of the other admitted supervisors at the facility. (ALJ 16).

59. It has long been established that knowledge of an employee's protected activities acquired by a lower level supervisor may be imputed to the higher managerial decision-maker. (ALJ 16).

60. Accordingly, I find that counsel for the General Counsel has established that Respondent had knowledge of these employees' union activities and support. (ALJ 16).

61. Lloyd testified that Lee sometimes talked with him about how the organizing campaign was progressing on the second shift. (ALJ 17).

62. Lee told Lloyd that Irving and Rainey were "taking it too far." (ALJ 17).

63. Lee also remarked that Irving and Rainey didn't have a long life at Respondent's facility if they kept up all the things that they were doing contending "they're nothing but problems." (ALJ 17).

64. Overall, I found Lloyd's testimony to be the more credible with respect to this

alleged incident. (ALJ 17).

65. Lloyd's account of the conversation was straightforward without any apparent attempt to embellish or aggrandize the details. (ALJ 17).

66. The undisputed record evidence reflects that Rainey and Irving went out of their way to show their support for the Union. (ALJ 17).

67. They were not content with simply wearing the shirts provided by the Union. (ALJ 17).

68. They went to the trouble to design their own shirts to show their personal feelings about the Union. (ALJ 17).

69. Because Lloyd was not as active or as vocal in his support for the Union, it is reasonable that Lee would have tried to warn Lloyd of the consequences of such active union support that Rainey and Irving had demonstrated. (ALJ 17).

70. Accordingly, crediting the testimony of Lloyd, I find merit to complaint allegation 7(g). (ALJ 17).

71. Both Rainey and Irving testified that they reported the incident [after the election] with Lee to Luckie. (ALJ 17).

72. Although Luckie testified that neither Rainey nor Irving had complained about threats made to them, he did not specifically deny that they had complained about Lee's conduct on the day of the election. (ALJ 17).

73. Luckie testified that although Rainey complained to him about Lee, the

complaints were not related to the Union. (ALJ 17).

74. As evidenced by the discussion above concerning the allegations in complaint paragraph 7(g), it is apparent that Lee engaged in negative comments relating to both Rainey and Irving. (ALJ 17).

75. Although Lee denies that he saw Rainey and Irving after the election, I credit Rainey's and Irving's testimony that they saw Lee after the election and that he responded by making gestures toward them. (ALJ 17).

76. Despite the fact that Lee may not have expressed the level of hostility that is often associated with the extended middle finger, it is reasonable that his gestures or body language otherwise communicated his negative feelings toward Irving and Rainey in relation to the vote count. (ALJ 17).

77. Although he was a lower level supervisor, Lee's actions toward Rainey and Irving after the election clearly evidenced the extent to which Respondent viewed the close association between these two employees and the Union. (ALJ 17).

78. In the instant case, Luckie testified that the decision to terminate Rainey, Irving, and Lloyd was made approximately a week before their termination on November 5, 2010. (ALJ 18).

79. Although this alleged decision date occurs approximately 5 weeks after the election, Luckie also admits that Connolly first discussed a plan to eliminate some of the team leaders as early as the third week in August. (ALJ 18).

80. Crediting Luckie's recall of this initial discussion, I find that Connolly and Luckie began these discussions to get rid of team leaders on or about the time that the Union filed its petition and Rainey began wearing his union shirts. (ALJ 18).

81. That Luckie contends he first discussed the termination of team leaders on or about the third week in August, 2010. (ALJ 18).

82. Thus, even though Respondent waited a number of weeks after the election to terminate these employees, the initial decision to eliminate team leaders occurred during the union campaign. (ALJ 18).

83. Accordingly, the timing of the decision to eliminate these team leader positions is suspect and supports a finding of unlawful motive. (ALJ 18).

84. Respondent provided no detailed explanation as to how Connolly utilized these documents [Jt. Exs. 1 and 2] to arrive at the decision to terminate these three employees. (ALJ 19).

85. Connolly simply explained that because "team leaders are much like supervisors," he looked at the number of supervisors that he had in the Ada plant and he looked at the fact that he had 80 employees and 10 team leaders at the Arlington plant. (ALJ 19).

86. For a number of reasons, I do not find this rationale credible. (ALJ 20).

87. While Connolly asserted that Respondent constantly reviews staffing levels, there was no evidence presented as to how these ongoing reviews are conducted or when these reviews are conducted. (ALJ 20).

88. Although Respondent contends that it has previously eliminated management and team leader positions through attrition and consolidation of operations, Respondent failed to show how the terminations of these three individuals fit into a systematic or planned reduction in force. (ALJ 20).

89. Furthermore, Luckie admitted that other than Rainey, Irving, and Lloyd, Respondent had never previously terminated any team leaders as a reduction in force. (ALJ 20).

90. Although Connolly contended that he made this decision by comparing the staffing levels at 9 other facilities, there were no team leaders in the other facilities and there is no evidence to show that the other facilities did the same work as Arlington. (ALJ 20).

91. Respondent takes exception to the fact that the ALJ substituted her own opinion over the Company's conclusions about their business operations and staffing levels.

92. Thus, by using this rationale, Respondent was able to eliminate two of the most outspoken union proponents. (ALJ 20).

93. In order to give the appearance of conformity, Irving could not have been terminated unless Lloyd was terminated. (ALJ 20).

94. Although Respondent contends that it conducted ongoing staffing reviews, it was only after the Union began its 2010 organizing campaign that Connolly scrutinized the number of team leaders at the Arlington facility. (ALJ 20).

95. It is noteworthy that while Connolly alleges that he equated the team leaders with supervisors in formulating the decision to eliminate team leaders, Respondent never took the

position that team leaders were supervisors prior to the September 22, 2010 election or before the filing of the underlying unfair labor practices. (ALJ 20).

96. In accepting this rationale, a logical conclusion would be that Respondent intended to reduce its IT costs by reducing Rainey's position. (ALJ 21).

97. Respondent's stipulation, however, totally eliminates such a natural conclusion. (ALJ 21).

98. By virtue of its stipulation, Respondent denies that financial considerations, costs, or even productivity had anything to do with eliminating this position. (ALJ 21).

99. Respondent takes exception to the fact that the ALJ too broadly applied a stipulation entered into by the Company in good faith (at the urging of the ALJ to avoid a subpoena response issue) to apply to anything other than financial *records*. (ALJ 19).

100. Respondent takes exception to the fact that the ALJ's finding that the above-referenced stipulation meant the Company "denies that financial considerations, costs or even productivity had anything to do with eliminating" the positions. The stipulation provides only that the Company did not generate or rely on specific financial *records* in the decision making process.

101. Because Respondent also admits that the decision had nothing to do with job performance or discipline, the number of obvious reasons diminishes. (ALJ 21).

102. Thus, having removed all the other possible reasons for Respondent's actions, I find it illogical that Respondent's only motivation was to balance out numbers on a staffing chart

without consideration for costs or productivity. (ALJ 21).

103. Although the employee handbook section pertaining to the bumping procedure identifies bumping only from shift to shift, the handbook also includes a provision providing for team leaders to bump to another shift with the loss of their team leader status. (ALJ 21).

104. As discussed above, I have determined that Respondent, acting through its supervisors engaged in conduct that violated Section 8(a)(1) of the act. (ALJ 21).

105. The only individual conduct engaged in by Luckie that was found to be unlawful was interrogation of one employee and a promise of benefits. (ALJ 21).

106. That Respondent's animus toward Rainey and Irving was evident through Lee's threat to Lloyd. (ALJ 21).

107. The most telling evidence of animus, however, is demonstrated by Luckie's statement to Irving. (ALJ 21).

108. While the record does not support that the team leaders were supervisors, it is nevertheless clear that prior to the union campaign, Respondent viewed the team leaders as employees who were aligned with management. (ALJ 22).

109. Rainey testified without dispute that he had boldly told supervision that he was the employee who had initially contacted the Union. (ALJ 22).

110. Thus, it is reasonable that Respondent had reason to want to eliminate the team leaders who had so clearly abandoned their loyalty to the company. (ALJ 22).

111. Although Respondent's asserted rationale provides an otherwise legitimate basis

for its actions, it is apparent from the overall record that Respondent's asserted reasons for the discharges are pretextual - that is, either false or were not in fact relied upon. (ALJ 22).

112. Accordingly, having found that the asserted rationale is pretextual, I may appropriately infer that there is another motive for Respondent's actions; an unlawful one that Respondent seeks to conceal. (ALJ 22).

113. Based on the total record evidence, it is apparent that the Acting General Counsel has met the Wright Line burden in demonstrating that these employees' union activity and support was a substantial or motivating reason for their terminations. (ALJ 22).

114. Furthermore, even without a finding of pretext, Respondent has not demonstrated that it would have eliminated these jobs in the absence of the employees' union activity. (ALJ 22).

115. Accordingly, I find that Respondent violated Sections 8(a)(3) and (1) of the Act by terminating Rainey, Irving, and Lloyd on November 5, 2010. (ALJ 22).

116. Albeit self-serving, [Luckie's] testimony is further contradicted by the fact that all three of these employees voted without challenge in the September 2010 election. (ALJ 23).

117. There was no exclusion for team leaders. (ALJ 23).

118. A failure to file objections, however, does not address the issue of why Respondent did not raise the issue of supervisory status at the time of the election and made no effort to challenge their voting eligibility. (ALJ 23).

119. The most plausible reason is that Respondent has not previously considered these

employees to be supervisors and raises the issue now only to remove them from the protection of the Act. (ALJ 23).

120. The undisputed testimony of Lloyd also reflects that while team leaders were previously allowed to participate in meetings with management, this practice changed during the campaign period and team leaders were excluded from some of the scheduled management meetings. (ALJ 23).

121. [Luckie] did not identify any specific circumstances when he has done so [sought input from team leaders on hiring and firing]. (ALJ 23).

122. Lloyd testified that while he could recommend that someone is hired it "would not happen." (ALJ 23).

123. He testified, "A lot of folks recommend it, but like the supervisor there told us, 'You can recommend what you want to recommend, but it's my choice if I hire them or not." (ALJ 23).

124. [Luckie] did not however, explain what role they played in doing so, how frequently this may have occurred, or the specific circumstance when this has occurred. (ALJ 24).

125. The only evidence that Respondent offered to show that a team leader was involved in any discipline of another employee was a 2006 handwritten statement prepared by Irving. (ALJ 24).

126. The document does not reflect that Irving did anything other than report that

Rainey was interfering with the line. (ALJ 24).

127. There is no evidence that he recommended any discipline for Rainey. (ALJ 24).

128. Based on his cursing and his threat to get even, Rainey apparently did not view Irving as a supervisor. (ALJ 24).

129. Respondent provided no documentary evidence or testimony from Luckie or any other supervisor to demonstrate specific circumstances when team leaders have assigned work to either permanent or temporary employees. (ALJ 24).

130. There is no evidence that they use discretion in assigning specific tasks to individual employees. (ALJ 24).

131. Although Luckie testified that team leaders are held accountable for hitting targets, he provided no specific examples. (ALJ 24).

132. It is apparent, however, that this kind of discipline involved an isolated incident and that such discipline was not routinely given to team leaders. (ALJ 24).

133. Although the team leaders who testified agreed that their job was to keep the line running efficiently, there is no evidence that the team leaders had discretion to alter the - production orders received from their supervisors. (ALJ 25).

134. Irving recalled that if he needed anything in his supervisor's absence, he asked one of the team leaders with a cell phone to contact the supervisor to request the supervisor's assistance. (ALJ 25.).

135. There are no supervisory functions listed in the job description. (ALJ 25).

136. Such judgment and discretion, however, was utilized in performing the work to which [Rainey] personally was assigned. (ALJ 26).

137. As there were no other IT employees on his shift, [Rainey's] use of discretion or judgment related to his work only and not to work performed by any other employee. (ALJ 24).

138. Simply put, an employee cannot exercise supervisory authority in a vacuum. (ALJ 24).

139. Thus, there is no evidence that Rainey possessed or exercised supervisory authority as defined by the Act. (ALJ 24).

140. There is no evidence that they effectively recommend such actions. (ALJ 24).

141. It is apparent that they make routine decisions that are a part of the production process as opposed to exercising independent judgment that affects the terms and conditions of work for other employees. (ALJ 24).

142. While they communicate the orders and the work to be done on their line for the shift they lead, they do not assign employees where they will work and they exercise no discretion in determining the product to be produced by the line. (ALJ 24).

143. Although Rainey may have been the highest ranking IT employee on his shift and Irving and Lloyd may have occasionally been the highest ranking employee in the building during a supervisor's absence, the Act does not imply that employees having such responsibility are necessarily supervisors. (ALJ 24).

144. Even if the team leaders were at times working in the absence of admitted

supervisors, such circumstances does not establish them to be supervisors when admitted supervisors are available for consultation. (ALJ 24).

145. Accordingly, the total record evidence does not support a finding that Rainey, Lloyd, or Irving assigned and responsibly directed employees and/or exercised independent judgment as supervisors within the meaning of Section 2(11) of the Act. (ALJ 24).

146. As they were not supervisors, they had the full protection of the Act. (ALJ 24).

147. Respondent takes exception to the fact that the ALJ failed or refused to consider or cite to additional evidence presented by the Company regarding the supervisory status of the three team leaders.

148. By interrogating employees and by asking them whether they wanted an antiunion sticker, Respondent violated Section 8(a)(1) of the Act. (ALJ 26).

149. By interrogating employees about their union sympathies, Respondent violated Section 8(a)(1) of the Act. (ALJ 27).

150. By promising employees increased benefits and improved terms and conditions of employment if the employees refused to support the Union, Respondent violated Section 8(a)(1) of the Act. (ALJ 27).

151. By threatening its employees that they would be terminated because of their union activities and/or sympathies, Respondent violated Section 8(a)(1) of the Act. (ALJ 27).

152. By terminating Chris Rainey, Alsee Irving III, and Rockey Lloyd because they assisted the Union and engaged in concerted activities, Respondent violated Section 8(a)(3) and (1) of the Act. (ALJ 27).

153. Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the Act. (ALJ 27).

154. The Respondent having discriminatorily discharged Chris Rainey, Alsee Irving III, and Rockey Lloyd, it must offer them reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without loss of seniority or other rights or privileges. (ALJ 27).

155. Additionally, Respondent must make whole Chris Rainey, Alsee Irving III, and Rockey Lloyd for any loss of earnings and other benefits, computed on a quarterly basis from the date of their discharge to the date of proper offer of reinstatement, less any net interim earnings, plus interest compounded daily. (ALJ 27).

156. Respondent takes exception to the fact that the ALJ failed or refused to cite to or even consider the uncontested evidence presented by the Company that it constantly follows "lean manufacturing" principles, resulting in the terminations at least five other team leaders or other managers in reductions in force before the election petition was filed as part of its ongoing efforts to align staffing at the plant with other plants in the plastics division.

157. Respondent takes exception to the fact that the ALJ failed or refused to cite to or even consider the uncontested evidence presented by the Company that its employee handbook for the facility provides that reductions will be made by seniority and the uncontested evidence of the Company's adherence to the handbook provision and its past practice in this regard.

158. Respondent takes exception to the ALJ substituting her own opinion over the Company's when she concluded that the three alleged discriminatees should have been given the opportunity to take a demotion and remain employed at the facility, despite the acknowledged employee handbook provision to the contrary and despite the uncontested testimony from the plant manager that they had never permitted this to happen in the past.

159. Respondent takes exception to the fact that the ALJ failed or refused to cite to or even consider the uncontested evidence presented by the Company undercutting Rainey's credibility, such as the fact that he had been disciplined four times and suspended for three days by the same lower level supervisor (Joe Lee) he claimed gave him "the finger."

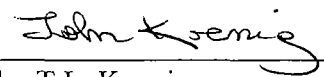
160. Respondent takes exception to the fact that the ALJ failed or refused to consider the Company's protected employer free speech rights guaranteed by 29 USC § 158(c) in that the Company's agents were expressing views or opinions without threat of reprisal, force, promise or benefit.

161. Respondent takes exception to the ALJ's Remedy. (ALJ 27).

162. Respondent takes exception to the ALJ's Order. (ALJ 27).

WHEREFORE, Respondent Flex-N-Gate Texas, LLC, respectfully submits that the ALJ's findings and conclusions as referenced above were in error and should be reversed and that the Board should find that Flex-N-Gate did not engage in any unfair labor practices under the National Labor Relations Act. As such, Respondent respectfully prays for judgment in Respondent's favor on all counts and claims set forth in the Complaint, that Charging Party take nothing by way of the Complaint, and for all other just and proper relief.

Respectfully submitted,



John T.L. Koenig
BARNES & THORNBURG LLP
Prominence in Buckhead, Suite 1700
3475 Piedmont Road N.E.
Atlanta, GA 30305-2954
Telephone: (404) 264-4018
Facsimile: (404) 264-4033
Attorneys for Respondent, Flex-N-Gate Texas, LLC

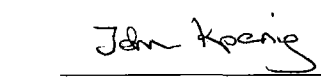
STATEMENT OF SERVICE

This is to certify that I have served a true and correct copy of the foregoing upon the following person, by first class mail:

Regional Director
NLRB – Region 16, Fort Worth Office
819 Taylor Street
Room 8A24
Fort Worth, Texas 76102

Danny Trull, Jr.
United Automobile, Aerospace and
Agricultural Implement Workers of America
1341 W. Mockingbird Lane
Suite 301
Dallas, Texas 75247

This 25th day of January, 2012.



John T.L. Koenig

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