

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28

IN THE MATTER OF:

G4S SECURE SOLUTIONS (USA) INC.,

Respondent,

CASE NO. 28-CA-23380

and

INTERNATIONAL UNION, SECURITY, POLICE  
AND FIRE PROFESSIONALS OF AMERICA,  
(SPFPA)

Charging Party.

**RESPONDENT'S EXCEPTIONS TO ALJ'S DECISION**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Respondent G4S Secure Solutions (USA) Inc. ("G4S"), by and through the undersigned counsel, hereby files Exceptions to Administrative Law Judge Eleanor Laws' March 29, 2012 Decision ("ALJD"). The specific grounds for these Exceptions and citations of authority are set forth in G4S's supporting Brief. With these Exceptions, G4S hereby requests oral argument before the Board.

1. To the ALJ's finding of fact that Passenger Assistant Agents (PAAs) have no contact with passengers or other members of the general public. (ALJD, p. 3, l. 31).

2. To the ALJ's findings of fact regarding pins worn by other security guards represented by the Union. (ALJD, p. 6, ll. 15-24).

3. To the ALJ’s finding that Pablo was “evasive during this testimony and seemed focused on Banuelos’ complaint about the credentials rather than any complaint she made about Thario.” (ALJD, p. 9, ll. 42-44).

4. To the ALJ’s finding of fact that “Major Armstrong told Sterling that Operations Manager Ed Martini had wanted to fire her for missing her shift, but he had talked him out of it.” (ALJD, p. 10, ll. 4-5).

5. To the ALJ’s conclusion of law that G4S’s Professional Image rule in its Security Officer Handbook is overly-broad and violates Section 8(a)(1) of the Act. (ALJD, p. 20, ll. 31-32; p. 21, l. 29).

6. To the ALJ’s finding of fact that “the Security Officers working in the Passenger Assistance Area do not have any face-to-face contact with the public.” (ALJD, p. 21, ll. 8-9).

7. To the ALJ’s finding of fact that “[a]ny concerns about commanding authority with the public or presenting a certain public image would not apply to these employees.” (ALJD, p. 21, ll. 9-10).

8. To the ALJ’s finding of fact that “[t]he evidence presented shows that some Security Officers do not deal with the public, and the rule can be reasonably read to apply to off-duty officers.” (ALJD, p. 21, ll. 48-50).

9. To the ALJ’s finding of fact that “[o]bviously, these rules apply to off-duty conduct.” (ALJD, p. 21, ll. 19-20).

10. To the ALJ’s finding of fact that “[r]ead in context and construed against [G4S], its promulgator, it is not clear the rule is restricted to on-duty Security Officers.” (ALJD, p. 21, ll. 27-28).

11. To the ALJ’s finding of fact that “the ‘no insignias, emblems, buttons’ rule does not specify that it is limited to Officers who are on duty.” (ALJD, p. 21, ll. 14-15).

12. To the ALJ's conclusion of law that G4S's rule prohibiting Security Officers from engaging in unnecessary conversations while on duty violates Section 8(a)(1) of the Act. (ALJD, p. 21, ll. 33-34).

13. To the ALJ's findings of fact that Clemons told a group of workers in the McClintock kiosk in November 2010 that the Union should not be discussed at work and that the following week, Clemons cautioned Taresh to be careful talking about the Union because it should not be discussed at work. (ALJD, p. 22, ll. 2-6).

14. To the ALJ's finding that Taresh should be credited over Clemons. (ALJD, p. 22, ll. 9-16).

15. To the ALJ's conclusion of law that G4S's rule prohibiting Security Officers from engaging in unnecessary conversations while on duty was applied by Clemons to restrict Section 7 rights. (ALJD, p. 22, l. 34-35).

16. To the ALJ's conclusion of law that G4S's Confidentiality Policy is vague and overbroad and therefore violates Section 8(a)(1) of the Act. (ALJD, p. 22, ll. 39-40; p. 23, ll. 32-33).

17. To the ALJ's finding that G4S's Confidentiality Policy "is very similar to the confidentiality provisions in *Flamingo Hilton-Laughlin*, 330 NLRB 287 (1999)." (ALJD, p. 23, ll. 15-16).

18. To the ALJ's finding that "[i]t cannot be assumed that lay employees have the knowledge to discern what is a federal law, and thus permitted under the disclaimer, as opposed to what is a prohibited 'legal matter.'" (ALJD, p. 24, ll. 4-6).

19. To the ALJ's finding that the provision of G4S's social media policy which reads, "Do not comment on work-related legal matters without express permission of the legal department" is "reasonably interpreted to prevent employees from discussing working conditions

and other terms and conditions of employment, particularly where the discussions concern potential legal action or complaints employees may have filed.” (ALJD, p. 24, ll. 7-9).

20. To the ALJ’s finding that the provision “would reasonably be read to prohibit two employees, such as Sterling and Banuelos, from sending messages to each other about their issues at work and their EEOC and hotline complaints via a social networking site.” (ALJD, p. 24, ll. 10-13).

21. To the ALJ’s finding that the provision “would reasonably prohibit a discussion group among concerned employees on a social networking site.” (ALJD, p. 24, ll. 13-14).

22. To the ALJ’s conclusion of law that the provision “is reasonably interpreted to thwart protected discussions” and therefore violates the Act. (ALJD, p. 24, ll. 14-15).

23. To the ALJ’s finding that a nationwide posting is appropriate. (ALJD, p. 25, l. 38).

24. To the ALJ’s conclusion of law that Clemons made comments that threatened reprisals for Union activity and therefore violated Section 8(a)(1) of the Act. (ALJD, p. 26, ll. 6, 28-29).

25. To the ALJ’s crediting Taresh’s testimony over Clemons’ testimony. (ALJD, p. 26, ll. 9-11).

26. To the ALJ’s findings of fact that Clemons told Taresh and others at the McClintock kiosk in November 2010 not to discuss the Union at work and that the following week, Clemons warned Taresh to be careful who she talked to about the Union and where she did it because the Union should not be discussed at work. (ALJD, p. 26, ll. 10-15).

27. To the ALJ’s finding that Clemons’ alleged comments “are very similar to the comments” described in the cases cited by the ALJ. (ALJD, p. 26, ll. 20-29).

28. To the ALJ's finding of fact that Nagler testified that "Armstrong approached him." (ALJD, p. 27, l. 25).

29. To the ALJ's crediting Nagler's testimony over Armstrong's testimony and finding that the conversation in question took place in December 2010. (ALJD, p. 27, ll. 36-37).

30. To the ALJ's conclusion of law that the alleged comment by Armstrong created the impression of surveillance. (ALJD, p. 27, ll. 39-40).

31. To the ALJ's finding of fact that Nagler's Union activity was not open or publicized. (ALJD, p. 28, ll. 13-14).

32. To the ALJ's conclusion of law that "employees, including Nagler, would reasonably assume that their Union activities were under surveillance, and therefore Armstrong's statement violated Section 8(a)(1)." (ALJD, p. 28, ll. 14-16).

33. To the ALJ's conclusion of law that "Armstrong's instruction to employees not to speak with Rice, which were not rescinded after Rice was demoted from supervisor to employee, explicitly interferes with [Section 7 rights] and violates Section 8(a)(1)." (ALJD, p. 29, ll. 25-27).

34. To the ALJ's conclusion of law that "given all that was going on with respect to the Union organizing campaign, employees, and particularly Wickham, would reasonably perceive the comment as a threat." (ALJD, p. 29, ll. 28-29).

35. To the ALJ's conclusion of law that, due to its timing, Armstrong's alleged comment about Sterling's overtime use "would cause a reasonable employee to perceive it as" inherently threatening and therefore in violation of Section 8(a)(1) of the Act. (ALJD, p. 30, ll. 1-3).

36. To the ALJ's conclusion of law that regardless of whether Pablo said he would not re-hire union supporters, "Jiminez conveying it to Banuelos is reasonably construed as a threat and creates the impression of surveillance." (ALJD, p. 30, ll. 10-12).

37. To the ALJ's crediting Banuelos' testimony and finding Jiminez's alleged comments violated the Act. (ALJD, p. 30, l. 19).

38. To the ALJ's finding that "Sterling's receipt of a final warning, when she previously had a clean record with no history of discipline, shows she was treated less favorably than comparative employees." (ALJD, p. 32, ll. 11-13).

39. To the ALJ's finding of fact that Martin was mad at Sterling and wanted her fired. (ALJD, p. 32, ll. 15-18).

40. To the ALJ's conclusion of law that "the General Counsel has established, by preponderant evidence, the animus required to establish a *prima facie* case." (ALJD, p. 32, ll. 22-23).

41. To the ALJ's finding of fact that Sterling was not satisfied that the final warning had been changed to an oral warning. (ALJD, p. 32, ll. 31-35).

42. To the ALJ's finding that "the fact that the discipline was reduced does not provide an explanation as to the motivation behind the original discipline." (ALJD, p. 32, ll. 35-36).

43. To the ALJ's finding that "the later reduction of the discipline in Sterling's case does not negate it." (ALJD, p. 32, ll. 40-41).

44. To the ALJ's conclusion of law that "because Sterling's discipline was tainted by retaliatory animus, . . . it violates the Act and should be rescinded." (ALJD, p. 32, ll. 41-42).

45. To the ALJ's conclusion of law that "the preponderant evidence shows Wickham's termination was retaliatory . . . ." (ALJD, p. 34, ll. 11-12).

46. To the ALJ's finding of fact that "Lieutenants Taylor and Clemons were aware of Wickham's Union activity, and that Major Armstrong was aware of the Union campaign in general." (ALJD, p. 35, ll. 14-16).

47. To the ALJ's finding of fact that "the evidence establishes that three Lieutenants knew about Wickham's Union activity specifically, and two other Lieutenants and the Major knew about the Union organizing campaign generally." (ALJD, p. 35, ll. 20-22).

48. To the ALJ's finding that "Pablo's denial of knowledge [of Wickham's union activity] cannot be credited." (ALJD, p. 35, ll. 26-27).

49. To the ALJ's finding of fact that Armstrong knew about the Union campaign at least as of December 2010. (ALJD, p. 35, ll. 27-28).

50. To the ALJ's finding of fact that "[a]s Pablo's Project Manager for the Metro Light Rail, [union activity] is plainly the type of information [Armstrong] would convey up the chain if he was minimally doing his job." (ALJD, p. 35, ll. 28-29).

51. To the ALJ's finding of fact that "[i]f [the other Lieutenants] were doing their jobs, they would have informed higher management of the Union organizing campaign." (ALJD, p. 35, ll. 30-31).

52. To the ALJ's finding that "[g]iven that Rice was a supervisor, Clemons would have had a duty to report his involvement in Union organizing, as it amounted to misconduct." (ALJD, p. 35, ll. 33-35).

53. To the ALJ's finding that "[t]he timing of Clemons' memo is . . . highly suspicious." (ALJD, p. 35, l. 38).

54. To the ALJ's finding that "[t]he credible, specific and corroborated evidence of knowledge . . . simply outweighs the many blanket denials of knowledge at all levels of

management, particularly in light of the implausible lapses by supervisors and managers that would have needed to occur for Pablo to remain in the dark.” (ALJD, p. 35, ll. 39-42).

55. To the ALJ’s find that Pablo’s denial of the Union campaign in general or Wickham’s involvement in particular cannot be credited. (ALJD, p. 35, ll. 42-43).

56. To the ALJ’s conclusion of law that “the General Counsel met its burden to prove that knowledge of Wickham’s Union activity is properly imputed to [G4S].” (ALJD, p. 35, ll. 44-45).

57. To the ALJ’s conclusion of law that “the General Counsel has persuasively established unlawful motivation.” (ALJD, p. 36, ll. 5-6).

58. To the ALJ’s finding that “there are problems with Eggleston and Clemons’ accounting of events.” (ALJD, p. 36, ll. 9-10).

59. To the ALJ’s finding that “[g]iven that Eggleston and Clemons differed on how Wickham answered the door, which would be much more discernible than whether he was sleeping, I find that the reliability of these eyewitness accounts is shaky.” (ALJD, p. 36, ll. 16-18).

60. To the ALJ’s conclusion of law that “[t]here is also significant evidence of pretext.” (ALJD, p. 36, l. 20).

61. To the ALJ’s finding that Pablo’s statement that it was his policy as General Manager to terminate all employees caught sleeping on duty is problematic on several fronts. (ALJD, p. 36, ll. 20-22).

62. To the ALJ’s finding of fact that Pablo’s policy was “either not effectively communicated, inconsistently enforced, or both.” (ALJD, p. 36, ll. 25-26).



63. To the ALJ's finding of fact that "Lieutenant Rice and Major Thario apparently were unaware that sleeping on duty automatically meant termination as of November 12, 2009." (ALJD, p. 36, ll. 26-28).

64. To the ALJ's finding that G4S's argument that Rice's testimony admitting that he knew only Pablo could authorize terminations is off-point. (ALJD, p. 36, ll. 29-31).

65. To the ALJ's finding that "[t]here was no testimony that either Rice or Thairo, despite knowing only Pablo could authorize terminations, perceived Hill's infraction of sleeping on duty as warranting or requiring termination." (ALJD, p. 36, ll. 32-34).

66. To the ALJ's inference that supervisors did not know about Pablo's policy of terminating employees for sleeping on the job or they knew it was amenable to selective enforcement. (ALJD, p. 37, ll. 1-2).

67. To the ALJ's finding that "[h]ad [G4S] been serious about ensuring compliance, there would logically have been consequences for noncompliance." (ALJD, p. 37, ll. 47-48).

68. To the ALJ's finding of fact that Pike "was only removed after Pablo investigated and reviewed videos from a security camera that clearly showed Pike sleeping." (ALJD, p. 37, ll. 14-15).

69. To the ALJ's finding that the footage did not show Wickham at all, much less clearly establish that he was sleeping. (ALJD, p. 37, ll. 15-17).

70. To the ALJ's finding that "Pike's situation is . . . meaningfully distinguishable from Wickham's." (ALJD, p. 37, ll. 18-19).

71. To the ALJ's finding that "[s]ome of the explanations about why certain employees were not terminated for sleeping on duty also indicate pretext." (ALJD, p. 37, ll. 21-22).

72. To the ALJ's finding that the "chain of events" regarding Timothy Causey "makes no sense." (ALJD, p. 37, ll. 22-27).

73. To the ALJ's finding that "[t]he explanation for treating Causey, who had several infractions, including sleeping on duty, more favorably than Wickham, who had a single infraction, seriously strains credibility." (ALJD, p. 37, ll. 32-34).

74. To the ALJ's finding that G4S has offered "shifting explanations Wickham's termination." (ALJD, p. 38, l. 44; p. 39, l. 1).

75. To the ALJ's finding that "[t]he explanation [G4S] provided contemporaneous with Wickham's termination was that the security videotape at the Price & Apache kiosk showed him sleeping." (ALJD, p. 38, ll. 7-8).

76. To the ALJ's finding that "the reliance on the light sensors' failure to activate the lights to prove Wickham's lack of movement no longer held up." (ALJD, p. 38, ll. 14-15).

77. To the ALJ's finding that G4S's proffered reasons for terminating Wickham are pretextual. (ALJD, p. 38, ll. 17-18).

78. To the ALJ's finding that "[o]ther individuals, including Stone, were given the benefit of the doubt absent objective proof." (ALJD, p. 38, l. 26).

79. To the ALJ's finding that "[t]he failure to accord Wickham the same, particularly in light of the other evidence . . . , amounts to disparate treatment." (ALJD, p. 38, ll. 27-28).

80. To the ALJ's finding that "[t]he General Counsel conclusively proved that the videotape at the Price & Apache kiosk did not show Wickham sleeping. . . ." (ALJD, p. 38, ll. 31-34).

81. To the ALJ's finding that "Kercher issued Wickham's suspension before giving him an opportunity to give his side of the story." (ALJD, p. 38, ll. 35-36).

82. To the ALJ's finding that the investigation was not adequate. (ALJD, p. 39, ll. 1-2).

83. To the ALJ's conclusion of law that pretext exists because other employees were not terminated for engaging in prohibited conduct that under the Behavior Standards Manual and Security Officer Handbook can result in automatic dismissal. (ALJD, p. 39, ll. 4-27).

84. To the ALJ's conclusion of law that the General Counsel established a *prima facie* case. (ALJD, p. 39, l. 29).

85. To the ALJ's conclusion of law that G4S did not meet its burden under *Wright Line* of showing by a preponderance of the evidence that Wickham's discharge would have taken place even absent his Union activity. (ALJD, p. 39, ll. 40-42).

86. To the ALJ's finding that there is no information regarding whether or not other employees had prior infractions and/or whether their sleeping was objectively verified. (ALJD, p. 39, ll. 46-48).

87. To the ALJ's finding that it is not possible to compare Wickham's termination to other employees' terminations "in any verifiable way." (ALJD, p. 39, ll. 48-49).

88. To the ALJ's finding that "many of the infractions that led to termination in [G4S's] Exhibit 21, such as unexcused absence, insubordination, unacceptable job performance, led to lesser discipline for other Officers . . . ." (ALJD, p. 39, ll. 50-52; p. 40, l. 1).

89. To the ALJ's conclusion of law that G4S "has failed to meet its burden to prove that it would have terminated Wickham absent his Union activities." (ALJD, p. 40, ll. 1-2).

90. To the ALJ's conclusions of law that G4S "violated Section 8(a)(1) of the Act by promulgating and maintaining overly-broad rules as set forth herein; threatening and interrogating employees, and giving them the impression that their Union activities were under surveillance; and by disciplining Debra Sterling." (ALJD, p. 40, ll. 11-14).

91. To the ALJ's conclusion of law that G4S "violated Section 8(a)(1) and (3) of the Act by terminating Donald Wickham." (ALJD, p. 40, ll. 16-17).

92. To the ALJ's conclusion of law that the alleged unfair labor practices "affect commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act." (ALJD, p. 40, ll. 19-20).

93. To the ALJ's proposed remedy that G4S revise or rescind the contested parts of its Security Officer Handbook's Professional Image rule, "No Unnecessary Conversations" rule, and Confidentiality policy, and its Social Networking Policy, and advise employees in writing that said rules have been revised or rescinded. (ALJD, p. 40, ll. 29-33).

94. To the ALJ's proposed remedy that G4S restore the status quo ante and make appropriate changes to Sterling's personnel files and/or other supervisor-maintained files. (ALJD, p. 40, ll. 35-37).

95. To the ALJ's proposed remedy that G4S restore the status quo ante and make Wickham whole for any loss of earnings he may have suffered and offering to reinstate him to the position he held before his termination. (ALJD, p. 40, ll. 39-49).

96. To the ALJ's proposed order that G4S cease and desist from maintaining or enforcing the contested provisions of the Security Officer Handbook and the Social Networking Policy. (ALJD, p. 41, ll. 9-12).

97. To the ALJ's proposed order that G4S cease and desist from coercively interrogating any employee about the union support or union activities of that employee or any other employee. (ALJD, p. 41, ll. 14-15).

98. To the ALJ's proposed order that G4S cease and desist from giving employees the impression employees' union activities are under surveillance by management. (ALJD, p. 41, ll. 17-18).

99. To the ALJ's proposed order that G4S cease and desist from threatening employees with unspecified reprisals for engaging in union activity. (ALJD, p. 41, l. 20).

100. To the ALJ's proposed order that G4S cease and desist from disciplining employees for engaging in protected concerted activity. (ALJD, p. 41, l. 22).

101. To the ALJ's proposed order that G4S cease and desist from terminating or otherwise disciplining employees for engaging in union organizing efforts or other union activities. (ALJD, p. 41, ll. 24-25).

102. To the ALJ's proposed order that G4S cease and desist from, in any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act. (ALJD, p. 41, ll. 27-28).

103. To the ALJ's proposed order that G4S rescind and give no effect to the rules found unlawful by the ALJ. (ALJD, p. 41, l. 32).

104. To the ALJ's proposed order that G4S furnish employees nationwide with inserts for the current edition of the G4S Security Officer Handbook that advises that the rules found unlawful by the ALJ have been rescinded, or provide the language of lawful rules, or, alternatively, publish and distribute to all current employees employed by G4S nationwide a revised G4S Security Officer Handbook that does not contain the rules found unlawful by the ALJ, or provides the language of lawful rules; and take the same action with regard to G4S's Social Networking Policy. (ALJD, p. 41, ll. 32-37).

105. To the ALJ's proposed order that G4S, within 14 days from the date of the Board's Order, offer Wickham full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. (ALJD, p. 41, ll. 39-41).

106. To the ALJ's proposed order that G4S make Wickham whole for any loss of earnings and other benefits suffered as a result of the alleged discrimination against him as specified by the ALJ's proposed remedy. (ALJD, p. 41, ll. 43-44).

107. To the ALJ's proposed order that G4S, within 14 days from the date of the Board's Order, remove from its files any reference to Wickham's alleged unlawful discharge and discipline and within 3 days thereafter notify him in writing that this has been done and that his discharge and alleged illegal discipline will not be used against him in any way. (ALJD, p. 42, ll. 1-4).

108. To the ALJ's proposed order that G4S, within 14 days from the date of the Board's Order, remove from its files any reference to the alleged unlawful discipline of Sterling and within 3 days thereafter notify her in writing that this has been done and that the discipline will not be used against her in any way. (ALJD, p. 42, ll. 6-8).

109. To the ALJ's proposed order that G4S preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, and personnel records. (ALJD, p. 42, ll. 10-13).

110. To the ALJ's proposed order that G4S, within 14 days after service by the Region, post at all its Phoenix, Arizona area facilities copies of Appendix A to the ALJ's Decision. (ALJD, p. 42, ll. 15-25).

111. To the ALJ's proposed order that G4S, within 14 days after service by the Region, distribute copies of Appendix A to the ALJ's decision electronically. (ALJD, p. 42, ll. 25-28).

112. To the ALJ's proposed order that G4S, within 14 days after service by the Region, post at all of its facilities copies of Appendix B to the ALJ's Decision. (ALJD, p. 42, ll. 30-43).

Based on the foregoing Exceptions, as supported by G4S's Brief, G4S respectfully requests that the Board reject the ALJ's findings of fact, conclusions of law, and proposed order as excepted to above and dismiss the complaint in its entirety.

Respectfully submitted,

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April 26, 2012

**CERTIFICATE OF SERVICE**

On this date the foregoing **RESPONDENT'S EXCEPTIONS TO ALJ'S DECISION**  
was filed electronically and served by first-class mail on the following:

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I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

Executed on April 26, 2012, at Columbia, South Carolina.

By: /s/ Reyburn W. Lominack, III  
Reyburn W. Lominack, III