

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

ENTERPRISE LEASING COMPANY)		
OF FLORIDA, LLC, d/b/a ALAMO)	Case Nos.	12-CA-026588
RENT-A-CAR)		12-CA-026637
)		12-CA-026660
and)		12-CA-026706
)		12-CA-026723
TEAMSTERS LOCAL UNION NO. 769,)		12-CA-026820
AFFILIATED WITH INTERNATIONAL)		12-CA-027057
BROTHERHOOD OF TEAMSTERS)		

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

COMES NOW Respondent, Enterprise Leasing Company of Florida, LLC d/b/a Alamo-Rent-A-Car (“Enterprise” or “Respondent”), pursuant to Section 102.46 of the Board’s Rules and Regulations, Series 8, as amended, and files its “Exceptions” to the Decision of Administrative Law Judge (“ALJ”) Michael A. Marcionese in the above-referenced case, which issued on April 11, 2012. Respondent’s exceptions, in order of where they appear within that Decision, are as follows:

1. To the Administrative Law Judge’s Decision (hereinafter referred to and cited as “ALJD”) to credit the testimony of Marjorie Wiscup, Sara Rivera and Wanda Rivera over the testimony of Bridget Long and Lissette Dow (ALJD, page 4, line 45 - page 8, line 15).

2. To the ALJ’s conclusion that Respondent violated Section 8(a)(1) of the National Labor Relations Act (hereinafter “the Act”) by explaining why the employees would not have a short term disability benefit and by truthfully responding to employee questions about what benefits employees at the Respondent’s non-union National facility receive (ALJD, page 8, line 17 - page 9, line 15).

3. To the ALJ's failure to properly apply Board precedent, in reaching the conclusion (excepted to in paragraph 2, above) that the comments of Lissette Dow and Bridget Long were violative of Section 8(a)(1) of the Act (ALJD, page 8, line 38 page 9, line 22).

4. To the ALJ's conclusion that "On January 1, 2010, when the unit employees in Miami lost their short-term disability benefit, the non-union employees at National and Enterprise in Miami and elsewhere continued to receive short-term disability as part of the time-off policies recently implemented" (ALJD, page 10, lines 43-45), which conclusion is inapposite to the unrebutted record evidence that certain unrepresented employees also lost short-term disability benefits effective January 1, 2010.

5. To the ALJ's conclusion that "the union represented employees in the Alamo unit were the only ones left without such a benefit" (ALJD, page 11, lines 32-34), which conclusion is inapposite to the unrebutted record evidence and the ALJD's failure to consider the record evidence that *unrepresented* employees suffered a loss of short-term disability insurance when the Employer terminated the Vanguard STD Plan. For instance, any former Vanguard employee with more than ninety (90) days of service and less than two (2) years of service would have both lost the old Vanguard STD benefit and been ineligible to receive the Enterprise Time Off STD policy.

6. To the ALJ's *Wright Line* analysis and conclusion that the termination of the Employer's Short-Term Disability Plan violated Sections 8(a)(1) and (3) of the Act (ALJD, page 11, lines 4-37).

7. To the ALJ's failure to properly apply existing Board precedent, in reaching the erroneous conclusion that termination of the Short-Term Disability Plan violated Sections 8(a)(1) and (3) of the Act.

8. To the ALJ's failure and refusal, in evaluating the issue of waiver, to consider the critical element of bargaining history, inclusive of Respondent's evidence of the bargaining history between the parties; the significance of prior contractual language and other bargaining history evidence, all of which provided additional evidence of waiver, as opposed to the improperly narrow waiver analysis engaged in by the ALJ (ALJD, page 12, lines 8-25).

9. To the ALJ's conclusion that the Employer's Comprehensive Group Insurance Plan was not incorporated by reference into the Collective Bargaining Agreement (ALJD, page 12, lines 17-18).

10. To the ALJ's conclusion that "the language in Article 23, Section 3, which exempts 'provisions of the ... Plans' from the 'grievance, arbitration or negotiation procedure established [in the contract]' does not clearly and unmistakably waive the Union's right to bargain before the plan itself is eliminated." (ALJD, page 12, lines 21-24).

11. To the ALJ's conclusion that the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally eliminating short term disability (ALJD, page 12, lines 27-29).

12. To the ALJ's failure to properly apply existing Board precedent in reaching the conclusion excepted to in Exception 11, above (ALJD, page 12, lines 8-25).

13. To the ALJ's failure to apply, or even consider, in determining whether the Respondent violated Sections 8(a)(1) and (5) of the Act by unilaterally terminating the short-term disability plan, the "contract coverage analysis" (ALJD, page 12, lines 8-25).

14. To the ALJ's conclusion, wholly unsupported by any record evidence, that "Valero was investigating whether the Respondent was undermining its status as the recognized collective bargaining representative under Article 1 of the contract by permitting circulation of a decertification petition on company time." (ALJD, page 14, lines 27-29).

15. To the ALJ's conclusion that the Employer violated Section 8(a)(5) of the Act by interfering with the union's access to the employees on one day for less than an hour (ALJD, page 14, lines 37-42).

16. To the ALJ's conclusion that the Employer violated Section 8(a)(1) of the Act by interfering with the union's access (ALJD, page 14, lines 42-44).

17. To the ALJ's failure to consider the record evidence and conclude that the Union's conduct in coming to the facility was for the purpose of coercing employees in the exercise of their Section 7 right to sign a decertification petition, and in violation of the Act and therefore outside the protection of the Act (ALJD, page 14, lines 12-44).

18. To the ALJ's decision to credit the testimony of Glinda Jeffries (ALJD, page 16, lines 16-28).

19. To the ALJ's statement that Glinda Jeffries appeared uncomfortable testifying in front of Lissette Dow, when, in fact, Ms. Dow was not present in the hearing room during the testimony of witness (ALJD, page 16).

20. To the ALJ's conclusion that Respondent's Managers Elsass and Brown interrogated employee Cirillo Garcia regarding how many signatures appeared on a Petition and encouraged him to obtain more signatures where such a conclusion is contrary to the record facts (ALJD, page 16, lines 30-42).

21. To the ALJ's conclusions that Respondent's Managers Elsass and Brown in fact interrogated employee Cirillo Garcia regarding how many signatures he had, encouraged Garcia to get more signatures and that such conduct was coercive in violation of Section 8(a)(1) of the Act without considering any of the factors enumerated in existing Board precedent (ALJD, page 15, line 15 - page 17, line 2).

22. To the ALJ's conclusion that employee Jesus Torress "obtained from Dow a chart comparing the benefits at Alamo and National" despite the lack of any evidence that Dow provided the chart to Torres and the record evidence that Torres, on his own volition and without Dow's knowledge or permission, took the chart from Dow's desk (ALJD, page 20, lines 21-27).

23. To the ALJ's conclusion that the Respondent violated Section 8(a)(1) and (5) of the Act by withdrawing recognition from the Union even though Respondent possessed actual and objective proof that the majority of employees no longer wished to be represented by the Union (ALJD, page 20, line 29 - page 22, line 44).

24. To the ALJ's conclusion that employees who were working under a first contract that resulted in a loss of benefits from what they had prior to being represented by the Union were discussing the loss of short term disability when discussing the general loss of benefits and not the loss of benefits they suffered when the first collective bargaining agreement was reached (ALJD, footnote 12, and page 22).

25. To the ALJ's conclusion that any of the alleged unfair labor practices caused employee disaffection (ALJD, page 21, line 5 - page 22, line 44).

26. To the ALJ's conclusion that the Respondent committed any unfair labor practices after withdrawing recognition from the Union (ALJD, page 23, lines 4-43).

27. To the ALJ's conclusion that Respondent violated Sections 8(a)(1) and (5) of the Act in refusing to process a discharge grievance where no such obligation existed (ALJD, page 23, line 45 - page 24, line 5).

28. To the ALJ's Conclusions of Law (ALJD, page 24, line 7 - page 25, line 2).

29. To the ALJ's Remedy (ALJD, page 25, lines 5-24).

30. To the ALJ's Recommended Order (ALJD, page 25 - page 27, line 24).

31. To the ALJ's recommended Notice to Employees (ALJD, Appendix).

WHEREFORE, for the reasons set forth above and in its Supporting Brief simultaneously filed on this date, Respondent submits that its Exceptions must be granted and the April 11, 2012 Decision of the Administrative Law Judge Michael A. Marcionese must be reversed as set forth in Respondent's Exceptions and that the Amended Consolidated Complaint must be dismissed in its entirety. Respondent has, on this date, in accordance with Sections 102.114 and 102.46 of the Board's Rules and Regulations, filed a Supporting Brief (a copy of the ALJD is attached hereto).

Respectfully submitted,

THE LOWENBAUM PARTNERSHIP, LLC

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CERTIFICATE OF SERVICE

I hereby certify that I have on June 6, 2012, served a true and correct copy via e-mail upon the following addressed as follows:

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I hereby certify that I have on June 6, 2012, served a true and correct copy of the foregoing via electronic filing upon the following:

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