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

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and** **Cases 28-CA-023391**
**28-CA-066164**

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 611, AFL-CIO**

# ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Counsel for the Acting General Counsel, pursuant to Section 102.46 of the Board's Rules and Regulations, files the following Exceptions to the decision issued by Administrative Law Judge Eleanor Laws [JD(SF)-28-12] (ALJD), on June 22, 2012, in this matter:

A. Acting General Counsel' Exception 1

The Administrative Law Judge erred by inadvertently dismissing Complaint Paragraph 9(d)(2) which alleges that Respondent implemented changes to the Informal Step of the contractual grievance and arbitration procedures by refusing to sign in receipt of grievances reduced to writing after oral grievances were presented. (ALJD page 14, lines 29-30)

B. Acting General Counsel's Exception 2

The Administrative Law Judge erred by failing to find Respondent implemented changes to the Informal Step of the contractual grievance and arbitration procedures by refusing to meet with Union representatives on "company time". (ALJD page 14, lines 29-30)

C. Acting General Counsel's Exception 3

The Administrative Law Judge erred in failing to find the evidence did not establish employees were listening to the telephone conversation between Tafoya and Cash and that Cash violated Section 8(a)(1) of the Act by stating that Tafoya was not allowed on Respondent's property. (ALJD page 20, lines 26-27)

D. Acting General Counsel's Exception 4

The Administrative Law Judge erred in finding overtime work was contemplated in Article 17A of the collective-bargaining agreement and that there was no evidence to prove [mandatory overtime] violated the collective-bargaining agreement or deviated from past practice. (ALJD page 24, lines 35-39)

E. Acting General Counsel's Exception 5

The Administrative Law Judge erred in finding Respondent's one time request to have employee and Steward Eric Cox go to Supervisor Daryl Smyth's office was too insignificant to establish the imposition of an onerous working condition. (ALJD page 36, lines 7-8)

F. Acting General Counsel's Exception 6

The Administrative Law Judge erred in finding Respondent held the meeting with Plant solely for the purpose of informing the employee of, and acting upon, a previously made disciplinary decision and as a result did not unlawfully refuse Plant's request for Union representation at the meeting. (ALJD page 39, lines 39-40)

G. Acting General Counsel's Exception 7

The Administrative Law Judge erred in finding the Union was not entitled a requested email associated with Plant because Plant was not aggrieved by Respondent's denial of her request for Union representation and the requested document only became relevant if, in the future, Plant was subjected to an investigation or discipline in connection with the requested document. (ALJD page 41, lines 38-40)

Dated at Indianapolis, Indiana this 20th day of July 2012.

Respectfully submitted,

Fredric D. Roberson
Counsel for the Acting General Counsel
National Labor Relations Board
Region Twenty-Five
Room, 238, Minton-Capehart Federal Building
575 North Pennsylvania Street
Indianapolis, Indiana 46204
Phone: (317) 226-7536

## CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION in PUBLIC SERVICE COMPANY OF NEW MEXICO, Cases 28-CA-23391 et al. was served by E-Gov, E-Filing, E-Mail on this 20th day of July 2012, on the following:

***Via E-Gov, E-Filing:***
Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Paula G. Maynes, Attorney at Law
Miller Statvert, P.A.
P.O. Box 1986
Santa Fe, NM 87504-1986
*E-Mail: pmaynes@mstlaw.com*

John L. Hollis, Attorney at Law
John L. Hollis, PA
6020 Constitution NE #4
Albuquerque, NM 87110
*E-Mail: jhollis0@mindspring.com*

/s/ Iliana Ferrance
Iliana Ferrance
Secretary to the Regional Attorney
National Labor Relations Board, Region 28
2600 North Central Avenue, Suite 1800
Phoenix, Arizona 85004
Telephone: (602) 640-2163