

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

INSTITUTO SOCIO ECONÓMICO
COMUNITARIO, INC.,

Respondent,

and

UNIDAD LABORAL DE ENFERMERAS
(OS) Y EMPLEADOS DE LA SALUD,

Charging Party.

CASES: 24-CA-11762
24-CA-11880

EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

TO THE HONORABLE BOARD:

COMES NOW, Respondent, Instituto Socio Económico Comunitario, Inc., (herein called "INSEC" or the "Company"), through the undersigned counsel respectfully states and prays:

I. PROCEDURAL BACKGROUND

1. On March 28, 2011, the Unidad Laboral de Enfermeras(os) y Empleados de la Salud ("ULEES" or the "Union") filed a charge against INSEC alleging that the Company on or about February 10, 2011, did not provide certain information that was previously requested. On May 2, 2011, the Company was informed that an investigation was going to be conducted which respect to the allegations made by the Union.

2. During the investigation, a second charged was filed against INSEC whereby the Union alleged that since of about April 2011, the Company unilaterally and without notice was requiring unit employees to take forced vacations.

3. On June 30, 2011, a formal complaint was issued against INSEC with respect to Union's charge regarding the Company's failure to furnish information. On July 21, 2011, INSEC answered the complaint and denied the allegations made by the Union.

4. On that same date, INSEC filed a position statement regarding the second charged filed by the Union. INSEC stated, among other things, that contrary to the allegations made by the Union, the Company had only tried to encourage its employees to take their vacations and help coordinate them in accordance to the collective bargaining agreement that was in place.

5. On September 30, 2011, the charges were consolidated and an amended complaint was issued against INSEC. The consolidated amended complaint was timely answered by INSEC.

6. On February 29, 2012, a second consolidated amended complaint was issued. The Company answered the second consolidated amended complaint, denied the Union's allegations and reiterated that INSEC was encouraging its employees to take their vacations and helping them to coordinate the same in accordance to the collective bargaining agreement that was in place.

7. On April 26, 2012, a hearing was conducted in which the parties were able to reach a non-board settlement agreement with respect to the Union's allegation regarding the Company's alleged failure to provide certain information and giving a memo to an employee. As a result of this, the case was reduced to the Union's claim that the Company was forcing employees to take vacations during periods not requested by the unit employees without any notification to and bargaining with the Union.

8. On June 1, 2012, the Company filed its post hearing brief.

9. On August 1, 2012, Administrative Law Judge (“ALJ”) William Nelson Cates, issued a Decision in the present case (“Decision”) whereby it erroneously concluded that INSEC violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act (“Act”) upon forcing its unit employees to take vacation leaves during periods not requested.

10. On August 24, 2012, INSEC filed a Motion for Extension of Time to present its exceptions to the ALJ’s decisions. On August 27, 2012, the National Labor Relations Board (“Board”) granted the motion and allowed INSEC to file its exceptions by September 14, 2012.

11. Pursuant to Section 102.46(b)(1) of the Board Rules and Regulations, INSEC files this document containing its exceptions to the ALJ’s Decision. Also, today, INSEC filed a brief containing the legal arguments and references to the record in support of its exceptions to the ALJ’s Decision.

II. EXCEPTIONS

Exception A: The ALJ erred in ruling that INSEC forced its unit employees to take vacations during periods not requested by them in violation of Section 8(a) (5) of the Act.

The ALJ’s ruling is not supported by the evidence on the record since he failed to take into consideration the documental evidence and the testimony of INSEC’s witnesses who truthfully testified that during the week of April 18 through April 22, 2011 (“Holy Week”) INSEC did not open its facilities because none of the unit and non-unit employees had requested to work during said week. To the contrary, all unit and non-unit employees requested the Company to go on vacation leave during Holy Week.

It must be noted that neither the General Counsel nor the Union submitted evidence showing that a unit employee had requested to work and was later forced to take vacations during the Holy Week. Moreover, it is an unrefuted and uncontroverted fact-ignored by the ALJ- that none of the unit employees requested to work during Holy Week and that is why

INSEC closed all its offices during that time. This leads to only one possible conclusion: that INSEC never forced its employees to take vacation leave but encouraged them to submit their possible vacation dates in order to prepare the vacation schedule of all Company's employees. Thus, the ALJ's ruling is not supported by substantial evidence that a reasonable mind might accept as adequate to support a conclusion. Hence, the ALJ's ruling must be overturned. (See, Jolanda Vález-Pérez's Testimony, Hearing Transcript, P. 92).

Exception B: The ALJ erred in discrediting INSEC's witnesses' testimony by relying solely on the testimony given by the Union Representative which constituted uncorroborated hearsay

The ALJ's decision was based solely on the testimony given by Union Representative, Arturo Grant which, in turn, was grounded on uncorroborated hearsay testimony. Aside from the alleged written statement sent by unit employee, Miriam Cancel, expressing concern about her vacations (which was not submitted into evidence) Mr. Grant alleged that several employees-most of whom he did not recall their names-told him that they were forced to take vacations during Holy Week. However, Mr. Grant's testimony was discredited by Mrs. Vález's testimony, who stated that none of the unit employees had requested to work during the Holy Week of 2011.

Furthermore, the General Counsel and the Union failed to prove which unit employees had requested to work during the Holy Week and were compelled to take vacation leave. The documents admitted into evidence during the hearing indisputably showed that INSEC only asked its employees to submit their possible vacation dates. Conversely, the evidence on the record neither says nor allows to infer that employees were forced to take vacation leave during Holy Week or prior to September 30, 2011. Based on the evidence on the record, it is clear that INSEC did not give any instruction with regards to the taking of vacations contrary to the dispositions contained in the collective bargaining agreement which the ALJ recognized that it required unit employees to submit their vacations date prior to September of each year and that

Company could, at its own discretion, declare Holidays charged to the employees vacations. Thus, the ALJ's ruling must be overturned since it is based solely on Mr. Grant's uncorroborated hearsay testimony unsupported by substantial evidence and contrary to his own findings. (See, Arturo Grant's Testimony, Hearing Transcript, P. 54).

III. CONCLUSION

For the reasons stated above, we respectfully request the Board to admit the aforementioned exceptions, reject the ALJ's Decision, and conclude that:

1- INSEC did not violate the Act upon closing its facilities during the Holy Week and coordinating unit employees' vacations as stated in the collective bargaining agreement.

2- Neither the General Counsel nor the Union proved that unit employees had requested to work during Holy Week and were forced to take vacation leave during said time or prior to September 30, 2011.

3- The ALJ's decision must be set aside since it was based on uncorroborated hearsay testimony.

RESPECTFULLY SUBMITTED.

By E-filing, in Washington, D.C. this 14th day of September 2012.

CERTIFICATE OF SERVICE: We hereby certify that on this same date a true and exact copy of this document has been served in conformance with the requirements of the Board's Rules and Regulations to: Ayesha K. Villegas-Estrada, at aysha.villegas-estrada@nlrb.gov; Harold E. Hopkins, at snikpohh@yahoo.com; Unidad Laboral de Enfermeras(os) y Empleados de la Salud, at contacto@unidadlaboral.com; the Region 24 of the National Labor Relations Board and the Division of Judges using the E-Filing system.

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