

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

VILLAGE MOTORS, LLC D/B/A	)	
LIBERTYVILLE TOYOTA,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	CASE NO. 13-CA-63676
AUTOMOBILE MECHANICS' LOCAL NO.	)	
701, INTERNATIONAL ASSOCIATION OF	)	
MACHINISTS & AEROSPACE WORKERS,	)	
AFL-CIO,	)	
	)	
Charging Party.	)	
_____	)	

**RESPONDENTS' EXCEPTIONS TO  
THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Come now Village Motors, LLC d/b/a Libertyville Toyota (“the Respondent”), by and through undersigned Counsel, and, pursuant to Section 102.46 of the Board’s Rules and Regulations, as amended, files the following exceptions to the Decision (“ALJD”) issued by Administrative Law Judge Earl E. Shamwell (“ALJ”) on August 16, 2012. For every exception to a finding of fact, the basis for the exception is that it is not supported by the record evidence as a whole. Additional grounds for exceptions are stated as appropriate. The grounds for these exceptions are set forth within Respondent’s supporting Brief.

1. Respondent excepts to the ALJ’s characterization that AutoNation “has always resisted the Union’s organizing efforts and pursuant to its opposition has developed strategies and created opposition materials to include video presentations in which Libertyville techs were featured as late as 2009.” (ALJD p. 3, lines 30-33).

2. Respondent excepts to the ALJ's characterization that Respondent "undertook its opposition" (ALJD p. 3, line 35).

3. Respondent excepts to the ALJ's characterization that Respondent "expressing essentially the Company's opposition to the Union" (ALJD p. 3, line 39)

4. Respondent excepts to the ALJ's finding Davis "did raise the length of negotiations, saying it was anyone's guess as to how long they would take to reach an agreement (contract)." (ALJD p. 23, lines 41-43).

5. Respondent excepts to the ALJ's finding "potential blacklisting do not necessarily have to be accompanied by a specific intent or specific acts to threaten employees in violation of the Act." (ALJD p. 31, lines 25-26)

6. Respondent excepts to the ALJ's finding "statements connoting blacklisting may violate Section 8(a)(1) of the Act even when no specific actions are inevitable or imminently threatened by the employer." (ALJD p. 31, lines 37-38).

7. Respondent excepts to the ALJ's conclusion that, "Of course, the managers clearly emphasized that the employees should be especially wary of the 'sales pitch' of the Union." (ALJD p. 43, lines 12-13).

8. Respondent excepts to the ALJ's conclusion that, "The employee participants called by Respondent, Syme, Sorg, and Ingram, were to me clearly antiunion..." (ALJD p. 43, lines 30-31).

9. Respondent excepts to the ALJ's characterization that employees made stridently antiunion comments. (ALJD p. 43, lines 32-34)

10. Respondent excepts to the ALJ's conclusion that, "I have considered the pertinent statements attributed to the Respondent's managers for the meaning one could reasonably

construe from their utterance, and not necessarily the actual words employed to convey the message.” (ALJD p. 43, lines 44-46).

11. Respondent excepts to the ALJ’s conclusion that, “that in these series of remarks at the August 23 meeting, while Davis did not say or imply that his Company would blacklist them to future employers, Davis did effectively threaten the employees with ‘blacklisting’ or ‘blackballing’ if they chose the union or even became associated with the union campaign, in terms of their future employment in the auto industry and otherwise.” (ALJD p. 45, lines 11-15).

12. Respondent excepts to the ALJ’s conclusion that, “In these series of remarks, in my view, Davis clearly conveyed that the assembled employees, should they choose the union or even more significantly were thought to be associated with a union campaign, *would* be – not could be – stigmatized such that their career ambitions or other employment opportunities would be adversely affected.” (ALJD p. 45, lines 20-23).

13. Respondent excepts to the ALJ’s conclusion that, “the Respondent violated the Act by and through these remarks.” (ALJD p. 45, lines 23-24).

14. Respondent excepts to the ALJ’s conclusion that, “taken as a whole, Davis’ message conveyed to the gathered employees that if they chose the union, this could be essentially an exercise in futility in terms of addressing their concerns for improvements in their terms and conditions of employment; that the Company essentially would not agree to anything in the contract negotiations that it did not want to; and that any such negotiations would take many, many years and in the end, still there might not be a contract.” (ALJD p. 48, lines 22-27).

15. Respondent excepts to the ALJ’s conclusion that, “these statements again taken as a whole, are violative of the Act” (ALJD p. 48, lines 29-30).

16. Respondent excepts to the ALJ's conclusion that, "the statements of Andrews and Davis combined conveyed by implication that the Respondent was at the least amenable to considering and providing wage increases to employees in the interest of competitiveness if the employees did not vote the Union in." (ALJD p. 50, lines 4-7).

17. Respondent excepts to the ALJ's conclusion that, "Davis' last remark especially to me exhorts the employees to come to management and deal with their concerns about wages without bringing the Union in, and in that regard there is almost an expressed promise to do something about the employees' concerns for wages if the employees exclude the Union." (ALJD p. 50, lines 7-10).

18. Respondent excepts to the ALJ's conclusion that, "the Respondent violated the Act by these statements of Andrews and Davis." (ALJD p. 50, lines 10-12).

19. Respondent excepts to the ALJ's conclusion that, "the message conveyed by management in my view was that when the Union comes in, there would be a reclassification of the current employees into either a journeyman or apprentice classification, and that along those lines anyone in the apprentice class would be demoted, the classifications being based on acquired certifications and skill sets." (ALJD p. 51, lines 18-22).

20. Respondent excepts to the ALJ's conclusion that, "the managers did not posit their opinions on the *possibility* of there being a reclassification different from that proposed in the discussions, but as Davis said, that is exactly how it would be negotiated." (ALJD p. 51, lines 22-24).

21. Respondent excepts to the ALJ's conclusion that, "Respondent's managers conveyed the message that should the Union come in, there would be a demotion of some employees in the service department." (ALJD p. 51, lines 25-26).

22. Respondent excepts to the ALJ's conclusion that, "the Respondent threatened the gathered employees with demotion should they select the Union as their representative in violation of Section 8(a)(1) of the Act." (ALJD p. 51, lines 26-28).

23. Respondent excepts to the ALJ's finding that Respondent violated Section 8(a)(1) of the Act. (ALJD p. 56, lines 23-39).

24. Respondent excepts to the ALJ's use of emphasis in quoting the August 23 meeting transcript, which was not present in the original. (ALJD pp. 44-51).

25. Respondent excepts to the ALJ's remedy and order. (ALJD, pp. 57-58)

### **CONCLUSION**

Based on the foregoing Exceptions to the Administrative Law Judge's Decision and Respondent' Brief in Support thereof, Respondent respectfully request that the Board reject the Administrative Law Judge's findings of fact and conclusions of law excepted to above, and dismiss the Complaint in its entirety.

A Brief in Support of Exceptions is included with this filing.

Dated this 27th day of September, 2012.

s/ David M. Gobeo  
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that **RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE** has been filed electronically with the Board through the Board's website, and copies served on Charles Mull, Esquire, National Labor Relations Board, and Gary Schmidt, International Association of Machinists and Aerospace Workers, AFL-CIO, via e-mail.

s/ David M. Gobeo\_\_\_\_\_

Date: September 27, 2012