

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

AC SPECIALISTS, INC.

and

Case 12-CA-076395

UNITED ASSOCIATION OF PLUMBERS,  
PIPEFITTERS & HVAC REFRIGERATION  
MECHANICS, LOCAL UNION 123, UNITED  
ASSOCIATION OF JOURNEYMEN AND  
APPRENTICES OF THE PLUMBING AND  
PIPE FITTING INDUSTRY OF THE  
UNITED STATES AND CANADA, AFL-CIO

**ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS  
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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## **I. Cross-Exceptions.**

Counsel for the Acting General Counsel hereby files the following cross-exceptions to the Administrative Law Judge's (ALJ) decision in the matter of AC Specialists, Inc., Case 12-CA-076395, reported at JD(ATL)-27-12, and issued on October 12, 2012:

1. The ALJ erred by concluding that Respondent did not unlawfully interrogate employees about their union activities and sympathies in violation of Section 8(a)(1) of the Act when David Winston, its consultant, and its supervisor and agent, asked technician Jerome Gordon about his contact with the Union and what made him want to contact the Union. (ALJD 5:24-29, 8:26-29).

2. The ALJ erred by concluding that Respondent did not unlawfully interrogate employees about their union activities and sympathies in violation of Section 8(a)(1) of the Act when Timothy Winston, its President and owner, and its supervisor and agent, asked technician Michael Noel about the Union and why he joined the Union. (ALJD 5:51-6:5, 8:26-29).

3. The ALJ erred by concluding that Respondent did not unlawfully interrogate employees about their union activities and sympathies in violation of Section 8(a)(1) of the Act when David Winston asked technician James Stahl "whether he had talked to the Union," and "what the fuck [Stahl] was trying to do to [David Winston] . . ." (ALJD 6:22-33, 8:26-29).

4. The ALJ erred by failing to include in his recommended remedy, order and Notice to Employees provisions to remedy Respondent's unlawful interrogation of the technicians. (ALJD 11-12, Appendix).

5. The ALJ erred by concluding that Respondent did not threaten to discharge employees because of their union activities in violation of Section 8(a)(1) of the Act when Timothy Winston

instructed technician Michael Noel to return to the facility and “turn in your stuff” after telling Noel that he had joined the Union behind Timothy Winston’s back. (ALJD 8:13-18).

6. The ALJ erred by concluding that Respondent did not threaten to discharge employees because of their union activities in violation of Section 8(a)(1) of the Act when Timothy Winston asked technician Jerome Gordon if he wanted “run [his] service call now and then turn in [his] van, or did [he] want to turn his truck in now” after David Winston violated Section 8(a)(1) by threatening to discharge Gordon, as found by the ALJ, by telling Gordon that he needed to decide what he was going to do, and after Gordon had told Timothy Winston that he “wanted to be union.” (ALJD 7:51-52; 8:1-5; 8:20-24).

7. The ALJ erred by failing to conclude that Respondent violated Section 8(a)(1) of the Act by threatening to discharge employees because of their union activities when, after interrogating technician James Stahl about his union activities and telling Stahl the Union “wasn’t going to happen,” David Winston told technician Stahl that he didn’t have a job, and Timothy Winston told technician Stahl that he was a “treasonous fucker” and to turn in his vehicle and see Timothy Winston face-to-face and see what happens. (ALJD 6:22-52).

8. The ALJ erred by concluding that Respondent did not threaten to discharge employees because of their union activities in violation of Section 8(a)(1) of the Act when Timothy Winston told technicians Gordon and Noel that they could thank Stahl “for getting you guys fired.” (ALJD 7:7-16, 9:4-14).

9. The ALJ erred by failing to find that David Winston stated to Gordon, Noel and Stahl, “good luck finding a union job in this town. If you want to find a fucking union job, you're not going to find it here.” (Tr. 154-155).

10. The ALJ erred by failing to find that David Winston threatened to discharge employees because of their union activities in violation of Section 8(a)(1) of the Act by stating to the technicians, “good luck finding a union job in this town. If you want to find a fucking union job, you're not going to find it here.” (ALJD 8:46-9:2; Tr. 154-155).

11. The ALJ erred by failing to find that Union organizer Russell Leggette demanded that Respondent recognize the Union as the exclusive collective-bargaining representative of its service technicians when he told Timothy Winston that Respondent’s employees “wanted Local 123 to be the collective-bargaining agent for terms and conditions of employment” and “either wanted to have an election or for him (Winston) to recognize Local 123 ... based on the authorization cards,” and then displayed the signed authorization cards of Respondent’s three service technicians to Timothy Winston and David Winston. (ALJD 4:36-52, 5:16-22).

12. The ALJ erred by concluding that Respondent did not violate Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of its service technicians, and by failing to recommend that the remedy and bargaining order require Respondent to recognize and bargain with the Union retroactively to March 9, 2012, the date the Union demanded recognition based on an authorization card majority, and the date Respondent embarked on a clear course of outrageous and pervasive unfair labor practices in order to undermine the Union’s majority status. (ALJD 9:30 to 11:22; ALJD 12:19-28 and Appendix).

13. The ALJ erred by failing to cite the unlawful threats of discharge and interrogations described above in cross-exceptions 1 through 10 as further grounds for the imposition of a Section 8(a)(5) bargaining order remedy. (ALJD 9:50 to 11-20; ALJD 12:19-28, Appendix).

14. The ALJ erred by failing to include in his recommended remedy and order that Respondent is required to reimburse the unlawfully discharged technicians for any excess federal and state income taxes they may owe from receiving a lump-sum backpay award.

15. The ALJ erred by failing to include in his recommended remedy and order that Respondent is required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid to the unlawfully discharged technicians, it will be allocated to the appropriate calendar quarters. (ALJD 11-14).

16. The ALJ erred by apparently inadvertently recommending the dismissal of paragraph 8(b) of the complaint, contrary to his findings of fact and conclusions of law. (ALJD 8:41 to 9:2).<sup>1</sup>

DATED at Tampa, Florida, this 21<sup>st</sup> day of November 2012.

Respectfully submitted.

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<sup>1</sup> It appears that the ALJ intended to recommend the dismissal of paragraph 8(c), rather than 8(b).

## CERTIFICATE OF SERVICE

I hereby certify that Counsel for the Acting General Counsel's Cross-Exceptions to Administrative Law Judge's Decision in the matter of AC Specialists, Inc., Case 12-CA-076395, was electronically filed and served by electronic mail on November 21, 2012, as set forth below:

### By Electronic Filing

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