

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

EXECUTIVE MANAGEMENT	)	
SERVICES,	)	
	)	
Employer,	)	
	)	
v.	)	CASE 25-RC-093670
	)	
INTERNATIONAL UNION UNITED,	)	
AUTOMOBILE, AEROSPACE AND	)	
AGRICULTURAL IMPLEMENT	)	
WORKERS OF AMERICA (UAW),	)	
	)	
Defendant.	)	

**EMPLOYER’S EXCEPTIONS TO THE HEARING OFFICER’S REPORT**

The Employer, Executive Management Services (“EMS”), pursuant to Sections 102.69 and 102.67 of the Rules and Regulations of the Board, respectfully files its exceptions to the Report of the Hearing Officer in the above-captioned case. The basis for these exceptions are more fully set forth in EMS’s Brief in Support filed herewith.

EMS respectfully excepts to the following findings and conclusions:

1. First, EMS excepts to the Hearing Officer’s findings and conclusion on page 7 of her Report, that the “UAW sought to hold General Motors to its long standing commitment to the UAW that it would pay housekeeping contractors at a rate that would enable those contractors to pay a living wage to their employees *if they negotiated higher wages and benefits.*” (Report at 7 (emphasis supplied).)

A. This finding contradicts the testimony of the UAW’s witness, Rich Mince, who testified regarding the commitment reached between the UAW and General Motors in 2007 (hereinafter, the “2007 Commitment”). According to Mince’s testimony, GM “made a commitment that they would give a fair wage to any contractor that came in to enable them to

give what would be considered a fair wage to their employees in our plants because they were going to be in our plants working alongside all of our members.” (Mince, Tr. 197:7-14.) The Hearing Officer’s finding contradicts this testimony by adding the language that GM’s longstanding commitment to the UAW was conditioned on whether employees negotiated higher wages and benefits. Mince’s testimony demonstrated that no such condition was present under the 2007 Commitment.

B. Notably, the Hearing Officer’s finding and conclusion on page 7 of the Report contradicts her factual finding on page 3, in which she accurately captured Mince’s testimony about the 2007 Commitment:

In the meantime, due to financial exigencies arising in 2007, the UAW agreed to allow General Motors to outsource the housekeeping work at its facilities. In exchange for that agreement, General Motors committed that it would be a “responsible corporate citizen” and pay the housekeeping subcontractors a sufficient amount to allow the subcontractors to pay their employees a living wage.

(Report at 3.)

2. Second, EMS excepts to the Hearing Officer’s finding that “EMS failed to produce any evidence that the UAW made false statements regarding General Motors’ commitment to supplement the contract between GMCH and EMS in order to sway employees’ votes.” (Report at 8.) The Hearing Officer found that “[t]he UAW’s message was that they had ‘verified’ that a long standing commitment was still applicable and would be applied to the GMHC [sic] facility and that commitment would make it possible for EMS to pay its employees more under its contract with GMCH.” (*Id.*)

A. As before, the Hearing Officer’s characterization that the UAW verified a long standing commitment from GM is in error. According to the testimony of the Union’s own witness, Rich Mince, GM made a commitment to pay all its housekeeping contractors a

sufficient amount to pay the contractors' employees a "fair wage." This longstanding commitment was not conditioned on the contractors' employees being organized. In its message to EMS employees on the eve of the election, however, the UAW representatives made it clear that GM would only subsidize the employees' wages if they voted in favor of the Union.

3. Third, EMS excepts to the Hearing Officer's conclusion that "[i]nstead of resembling a case where a party makes false statements to unlawfully sway employees' votes, this situation more resembles a case where employees are told a historical fact." (Report at 9.)

A. This conclusion is in error because the UAW's last-minute agreement with GM that the UAW represented to the EMS employees was materially different than the 2007 Commitment. The 2007 Commitment was not conditioned on contractors' employees being organized. Thus, the commitment that the UAW secured from GM on the eve of the election, which was conditioned on the Union winning the election, was not a "historical fact."

B. Furthermore, the promise of GM subsidies being made available at the bargaining table was not a historical fact because it did not merely represent something in the past, but instead, promised the employees a benefit if the employees elected the Union. Because the UAW brokered the deal with GM, UAW controlled access to the GM subsidies. The Union represented to the employees that they would only have access to those subsidies if they voted in favor of UAW representation.

4. Fourth, EMS excepts to the Hearing Officer's finding that the UAW did not mislead "the employees to believe that General Motors only offered the higher contractual rate to subcontractors whose employees are organized." (Report at 9.) According to the Hearing Officer, "[f]rom the evidence in the record this appears to be an accurate statement." (*Id.*)

A. As explained with regard to earlier exceptions, the 2007 Commitment between GM and the UAW was not conditioned on contractors' employees being organized. Any

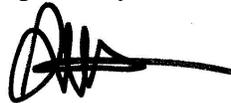
representation by the Union to the employees that this longstanding commitment was aimed only at unionized contractors misrepresented the terms of the 2007 Commitment.

B. Rather than seeking a commitment from GM to honor the 2007 Commitment and to pay EMS a higher rate regardless of the outcome of the election, the UAW brokered a new commitment from GM that was contingent on the Union winning the election. This conduct coerced the free choice of the EMS employees, because the employees reasonably understood they had to vote in favor of the Union to access the GM subsidies that the UAW had secured on their behalf.

With respect to each of the foregoing exceptions, the Employer will cite specific references to the Record in the accompanying Brief.

The Employer submits that the Hearing Officer's finding and conclusions that the UAW did not violate the Act as set forth in her Report on Objections and Recommendations to the Board are contrary to the evidence, applicable law and precedent governing union certification elections under the National Labor Relations Act. As a result, the Hearing Officer's recommendation that the election results be upheld must not be adopted. Accordingly, EMS respectfully requests that the Board set aside the tainted election results.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing “Employer’s Exceptions to the Hearing Officer’s Report” has been served upon the following counsel of record, by email and by first-class, United States mail, postage prepaid, this 26th day of April, 2013:

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