

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

C&G DISTRIBUTING COMPANY, INC.,
Respondent,

Case No. 8-CA-91304

and

TRUCK DRIVERS, WAREHOUSEMEN & HELPERS,
LOCAL NO. 908, AFFILIATED WITH THE INT'L
BROTHERHOOD OF TEAMSTERS,
Charging Party,

and

JERRY SPRAGUE,
Intervenor.

**INTERVENOR'S EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S DECISION**

Intervenor Jerry Sprague hereby submits the following exceptions to the Administrative Law Judge ("ALJ) Eric M. Fine's decision of April 24, 2013, JD-29-13 ("ALJD"), in the above captioned case:

1. the ALJ's findings concerning conduct that supposedly occurred in February-April 2012 and that this ostensible conduct is relevant to the allegations of the complaint (ALJD 4, lns. 43-51, ALJD 12 ln. 51 – 13 ln. 10, ALJD 14 lns. 38-43, ALJD *passim*);
2. that J.R. Guagenti's provision of Wheeler's phone number to Sprague was unsolicited and that this would be relevant to the allegations in the complaint even if true (ALJD 12 lns. 23-30, ALJD 12 lns. 51 – 13 ln. 10, ALJD 14 lns. 38-43, ALJD 16 lns. 10-29, ALJD *passim*);

3. that Sprague had conversations with Wheeler in August 2012 (ALJD 6 lns. 15-51, ALJD *passim*);
4. the ALJ's refusal to accept as true Holliday's undisputed testimony that 15-20 employees have borrowed company vehicles and that the company does not monitor the mileage of the vehicles used (ALJD 9 lns. 9-21, ALJD 15 fn.25);
5. that Sprague did not borrow a vehicle from C&G because his vehicle was broken (ALJD 15 fn. 25);
6. that C&G had some sort of policy or practice under which it only loaned vehicles for local drives (*id.*);
7. that C&G loaned the vehicle to Sprague to promote his decertification efforts, and not because Sprague's vehicle was broken (*id.*);
8. that an employer violates § 8(a)(1) of the Act if it provides more than ministerial aid to a decertification or encourages or promotes decertification (ALJD 9 ln. 40 – 12 ln.16; ALJD 18 ln.10 – 19 ln. 47; ALJD 20, ln. 5-10);
9. the ALJ's failure to find unlawful under § 8(c) of the Act the Board's "ministerial aid" and related standards governing employer speech concerning decertification, (ALJD 9 ln. 40 – 12 ln.16, ALJD *passim*), to include but not limited to the propositions that employers cannot lawfully engage in speech that encourages, promotes, or facilitates decertification (ALJD 9 lns. 40-46, ALJD 11 lns. 4-34) and that "an employer's lawful involvement with a decertification petition is limited to providing accurate information in response

to employee questions without threats or promises” (ALJD 10 lns. 22-25; *see also* ALJD 10 ln 16-21);

10. the ALJ’s failure to find the Board “ministerial aid” and related standards governing speech about decertification unconstitutional under the First Amendment to the United States Constitution (ALJD *passim*);
11. that the Board’s standards and case law regarding the assistance that employers may lawfully provide, and speech that employers may lawfully engage in, in support of certification or recognition are distinguishable from and do not conflict with the Board’s standards and case law regarding the assistance that employers may lawfully provide, and speech that employers may lawfully engage in, in support of decertification (ALJD 10-11 fn. 21);
12. the ALJ’s failure to find C&G’s conduct lawful under the Board’s standards and case law regarding the assistance that employers may lawfully provide, and speech that employers may lawfully engage in, in support of certification or recognition (*id.*, ALJD *passim*);
13. that C&G “violated § 8(a)(1) of the Act by providing Sprague with transportation to the hearing and paying his wages on August 9 and 10 for hours he did not work, but which were used to attend the decertification hearing” (ALJD 15 lns. 11-16; *see also* ALJD 21 lns. 9-16; ALJD *passim*);
14. that C&G “unlawfully insinuated itself into and promoted the decertification process by providing Sprague with his own personal experienced labor relations adviser, paying Sprague’s wages and providing him transportation to

- attend the decertification petition hearing, and thereafter suggestion to him the idea of filing a de-authorization petition.” (ALJD 14 lns. 34-38);
15. that case law in which the Board found it lawful for an employer to pay an employee who is acting as a witness in a Board proceeding is not controlling in this case and does not negate the unfair labor practice alleged here (ALJD 17 ln. 28 – 18 ln.9);
 16. that C&G violated § 8(a)(1) of the Act because Wheeler, in response to Sprague’s question, informed him of his right to file a deauthorization petition (ALJD 16 lns. 10 – 17 ln.26, ALJD *passim*);
 17. that Wheeler informing Sprague of his right to deauthorization, and other conversations with Sprague, are not speech protected by § 8(c) of the Act (ALJD 16 lns. 10-29; ALJD 17 fn. 27; ALJD *passim*);
 18. the ALJ’s failure to find it unconstitutional under the First Amendment to United States Constitution to sanction C&G and Sprague for Wheeler informing Sprague of his deauthorization rights (ALJD *passim*);
 19. that C&G violated § 8(a)(1) of the Act by providing more than ministerial aid to Sprague with decertification and deauthorization (ALJD 15 lns. 10-16; ALJD 16 lns. 10-29; ALJD 17 fn. 17; ALJD 20 lns. 18-31; ALJD *passim*);
 20. that C&G’s alleged conduct tainted Sprague’s decertification and deauthorization petitions and that those petitions should be dismissed as a result (ALJD 20, lns. 14-31, ALJD 18 ln.10 – 20 ln.52).
 21. the ALJ’s third conclusion of law (ALJD 21 lns. 9-16);

22. the Order recommended by the ALJ (ALJ 21-22);
23. the ALJ's failure to dismiss the Complaint (ALJD *passim*)

The grounds and basis for these exceptions are stated in Intervenor's Brief in Support of his Exceptions.

Submitted this 21st day of June 2013.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on Jun 21 2013, an electronic original of the Intervenor's Exceptions and Supporting Brief was transmitted to the National Labor Relations Board via its electronic filing system and, further and that copies of the foregoing Answer were transmitted to the following individuals by electronic mail:

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